(23,952)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1914.

No. 303.

CARLOS GSELL, PLAINTIFF IN ERROR,

vs.

THE INSULAR COLLECTOR OF CUSTOMS.

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

INDEX.

	Original.	Print
Caption	a	1
Transcript from the court of first instance of Manila	1	1
Bill of exceptions	1	1
Statement	1	1
Decision, Lobingier, J., December 13, 1911	2	2
Motion for new trial	5	3
Decision on motion for new trial, March 11, 1912	6	3
Third indorsement of collector, July 28, 1911	10	5
First indorsement of collector, July 21 1911	11	6
Second indorsement, July 27, 1911	11	6
Letter of secretary of finance and justice, July 18, 1911.	12	7
Decision of the collector, July 23, 1911	13	8
Protest No. 8062, May 4, 1911	15	9
Letter filing protest, August 27, 1910	18	10
Invoice, &c.	20	11
Importer's declaration, &c	25	14
Decision of collector, July 5, 1911	31	18
Protest, August 30, 1910	32	19
Decision of collector	34	20

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEBRUARY 5, 1915.

	Original.	Print
Protest of September 20, 1910	35	20
Decision of collector, July 5, 1911	37	22
Protest of October 24, 1910	38	22
Decision of collector, July 5, 1911	40	24
Protest of November 1, 1910	41	24
Decision of collector, July 5, 1911	43	26
Protest of November 2, 1910	44	26
Decision of collector, July 5, 1911	46	28
Protest of November 22, 1910	47	28
Decision of collector, July 5, 1911	49	30
Protest of January 14, 1911	50	30
Decision of collector, July 5, 1911	52	32
Protest of March 18, 1911	52	32
Decision of July 5, 1911	55	34
Protest of March 18, 1911	56	34
Decision of collector, July 5, 1911	58	36
Protest of April 6, 1911	59	36
Bill of exceptions filed in supreme court	61	37
Cause submitted	61	37
Decision	61	38
Judgment	64	39
Petition for writ of error	64	39
Assignment of errors	65	40
Writ of error	67	40
Allowance of writ of error	68	1
Bond on writ of error	69	41
Citation and service	71	42
Præcipe for record	72	43
Clerk's certificate	73	43
Certified copy of judgment	74	44

a THE UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

Supreme Court, File No. 7958.

CARLOS GSELL, Plaintiff,
versus
THE INSULAR COLLECTOR OF CUSTOMS, Defendant.

Certified Copy of Proceedings Had in the Court of First Instance of Manila and in the Supreme Court of the Philippine Islands.

1 UNITED STATES OF AMERICA,
Philippine Islands:

In the Court of First Instance of Manila.

Court Case. No. 150 C. A.

CARLOS GSELL, Appellant,
vs.
THE INSULAR COLLECTOR OF CUSTOMS, Appellee.

Bill of Exceptions.

The present Bill of Exceptions shows that under a letter dated July 18, 1911, addressed to the Insular Collector of Customs by the Hon. Secretary of Finance and Justice, marked "3," the original of which he made a part of this Bill of Exceptions, the Insular Collector of Customs sent, under the endorsements marked "1" and "2." the original of which are made a part of this Bill of Exceptions, to the Court of First Instance the documents marked with numbers from 4 to 43 inclusive in pages, the same being made a part of the Bill of Exceptions and the Exhibits marked "A" (Bradford noils), "B" (American noils), "C" (Mulhouse noils), "D" (Woolwaste), "E" (Washed Wool) and "F" (Wool unwashed).

2 II.

That the trial upon the question involved in this documents, referred to in the above paragraph was held in the Court of First Instance on the 10th of November, 1911, and was submitted for decision by the parties upon the said documents and exhibits no evidence having been produced by either party.

III.

That before the rendition of judgment, the Solicitor-General submitted to the Court the documents marked "76" and "77."

IV.

That on December 13th, 1911, the following decision was rendered by the Court of First Instance.

"The Collector of Customs classified the commodity in question as "wool not further advanced in condition than washed," (Philippine Customs Law of 1909, par. 311), instead of "wool not otherwise provided for; wool waste" (par. 135-*a*), this conclusion purporting to be based upon "the testimony taken at the hearing and further investigation." Had the classification actually been based upon testimony we should have been disposed to give it the same force as the finding of any other inferior tribunal. But in official letter to the Solicitor General and by him made a part of the record equally with the decision, the Collector says:

3 "No testimony was taken on the hearing of this case. * * * The report and recom-endation of the members of the Board of Protests and Appeals are never considered to be a part of the papers in a case of this nature * * * are confidential" * * * and * * * are not being furnished."

It is certainly the court's desire, as urged in appellee's brief (p. 3) that:

"For the purpose of deciding this case upon appeal, the court should be as informed about all the facts in the case as was and is the Collector."

But as the Collector heard no testimony, and neither party has seen fit to offer any here, and as the classification is now shown to have been based upon, "confidential" but "divided * * * recommendations" we see nothing to do but to decide the question upon the bare record.

Among its contents is a certified copy of the importer's declaration wherein the commodity is expressly described, over the signature of his agent, as "wool waste." It is true that the invoice merely mentions "wool" but this was not signed by the importer. It may also be true, as his counsel says (p. 2) that.

"The importer declares them (the goods) as they are classified by the Customs officials and then enters his protest."

But in this case it appears from his letter of August 27, 1910, that he had learned of the classification two days after the date of the declaration and that his protest was not made until four weeks later. Now, this declaration is one of the few items of com-

4 petent evidence in the record. It is literally a "declaration against interest"—an admission—which, being a part of the record is properly considered here (Bagsa v. Nagramada, 11 Phil. 177).

But while this admission by the importer would seem to justify us in classifying these "noils" as "wool waste" we are convinced after scrutinizing the record, that this would not be a proper classification. As stated by the importer's counsel:

"A last and most conclusive argument is the value of noils. The record shows it is P2.00 per kilo. Wool uncombed is only P3.00 per kilo. The waste herein mentioned, top waste, slubbing waste,

roving waste, ring waste, yearn waste, garnetted waste, etc., and mentioned in paragraph 388 of the tariff law of 1890 of the United States, have very little value."

We are of the opinion that these "noils" are properly classified under par. 300-*b* of the Philippine Customs Law. The importer's letters of August 27, 1910, and May 4, 1911, show that the raw wool, after being washed, is separated by machinery the long hairs being taken up by the machine and the short ones left in the form of the "noils" in question. We are of the opinion that this mechanical separation is a "process" within the meaning of par. 303 and, being further advanced than washing, takes the article out of par. 311. An inspection of the samples, moreover, shows a marked difference between that labelled "wool waste" (D) and those labelled "noils." The latter are much cleaner and of finer quality. (Samples, A, B & C).

5 As to the purpose of the Philippine Customs Law of 1909, the primary and only specific one, as recited in its title, is "to raise revenue," which would hardly be promoted by resolving doubts in favor of the free list.

The decision of the Collector is reversed without costs but with directions to classify in this case the commodity under said par. 303 (*b*), and to collect duties accordingly.

By the Court.

(Sgd.) CHARLES S. LOBINGIER, *Judge.*

Manila, P. I., December 13, 1911.

V.

That on the 21st day of December, 1911, Carlos Gsell filed a motion for new trial, as follows:

"Appears Carlos Gsell and duly excepts against the decision rendered in this case, and asks for a new trial on the following grounds:

1. That the evidence adduced does not warrant the decision; and
2. That the decision is against the law.

Manila, P. I., December 21, 1911.

(Sgd.) RHODE AND WRIGHT,
Counsel for Plaintiff.

This motion was denied by the Judge of the Court of First Instance on the 11th day of March in the following decision:

6 The contention that "paragraphs 135 and 311 cover all known conditions of wool," seems to beg the question whether the result of the mechanical separation described in appellant's protest and letters of August 2, August 30, September 20, and October 24, 1910, is a "condition" within the meaning of the Tariff Law. If it is, the product cannot be included under paragraph 311, because it is "farther advanced * * * than washed. "The word "condition" is defined by Webster as "mode or state of being; state of situation with regard to external circumstances or influences" etc.; "essential quality; property; attribute." Nothing is

said which would support the contention in counsel's brief that the word "condition does not refer to the natural or inherent quality of the article or substance but to the condition of the substance separate and apart from its natural attributes" and "as distinct from quality."

Wool in which long and short fibres are indiscriminately mixed can hardly be in the same "situation with regard to external circumstances" as that containing only one class or the other. And wool so separated would seem to be "further advanced in condition than washed," even if it has "escaped being combed."

As to paragraph 135, we have appellant's own statement in his protest (p. 3) that "noils cannot possibly be defined as wool waste." So that the only other paragraph under which to classify them would be 303. We never supposed that paragraph is "applicable to wool"
alone. But by its very terms it is an omnibus clause covering
7 "materials, substances and articles not otherwise provided
for" and we see no reason why this should not include wool. To hold that other paragraphs of the Tariff Law "cover all known conditions" of anycommodity would be to assumeomniscience in the law maker. It was because not "all known conditions" were believed to be covered by the others that paragraph 303 was inserted. We think it extremely doubtful, e. g., whether the legislators had in mind the particular separation process described in appellant's letters. It is rather an unusual one, not likely to be familiar to any but experts in a narrow line.

If wool in the condition of short, segregated fibres is "further advanced than washed," is it also further advanced in value? On this point also we have appellant's declaration in his protest (p. 3) as follows:

"I used noils for the manufacture of felt hats, because the short and thin hairs of the wool give a lighter hat and finer felt, than long haired wool." Clearly then they were more valuable for his needs, than either the "long haired wool" or the mixed wool. In other words, they were "further advanced in value," and it is applying, rather than "breaking the back of," the rule of assimilation" to assess them at a higher duty.

We think it also appears clearly enough from appellant's letters that the change by which these noils are advanced to the desired state or condition is a "process" within the meaning of par. 303 and in fact a phase of combing or carding, for in his letter of October 24, 1910, he described them as:
8 "Short wool which during the carding process of the wool
has been rejected from the carding machine." In others words, these noils are a by-product of wool formed "during the carding process," just as vaseline is a by-product of petroleum, formed during the process of refining. It will not be questioned that vaseline is "further advanced in condition" than crude petroleum and that the former's manufacture constitutes a process.

In his oral argument counsel complained because the court considered the appellee's official letter of December 1, 1911, as explaining his decision of June 23, but we do not see why one is not en-

titled to as much consideration as the other. The so-called "decision" is not really a judicial one; it is nothing more than an administrative order, which has full effect so far as its directions are concerned, but it has no more weight as a judicial finding than any other official statement by the Collector. His declaration that "no testimony was taken" was considered only in determining the force of counsel's argument that he must have had evidence before him which this court did not have and that on that account the order or decision should be affirmed. When it was found that no such evidence had been taken before the Collector op-ortunity was given to the appellant to produce further evidence, and this leave was availed of by presenting only appellant's affidavit which, assuming it to be true in toto, does not, in our opinion, affect the con-
9 clusions reached in our former judgment. The motion for a new trial is accordingly overruled.

By the Court.
(S'g'd) CHARLES S. LOBINGIER, *Judge.*

Manila, P. I., March 11, 1912.

Carlos Gsell duly excepted against the decision.
(S'g'd) RHODE & RIGHT.

Filed on the 16 of March, 1912, at 11 a. m.
(S'g'd) J. McMICKING, *Clerk.*

10 C. A. No. 150.

The Government of the Philippine Islands,
Bureau of Customs,
Manila, P. I.

Office of the Insular Collector of Customs.

In reply please refer to No. Protest No. 8062.

Jul- 28, 1911.

3rd Indorsement.

Subject.

On July 21, 1911, the Insular Collector of Customs, in accordance with opinion of the Secretary of Finance and Justice, directs that protest No. 8062, and all similar protests, filed by Carlos Gsell, Manila, be transmit-ed to the Court of First Instance, Manila, for review.

Action.

Respectfully transmit-ed to the Clerk, Court of First Instance, Manila, in accordance with letter of the Honorable, the Secretary of Finance and Justice, dated July 18, 1911, enclosed herewith, to-

gether with official extract of Entry No. 18256, true copy of invoice, exhibits, and other pertinent papers connected with the case.

Pursuant to Section 287 of Act No. 355, as amended by Act Numbered 1405 of the United States Philippine Commission, I hereby certify that the attached entry, invoices, exhibits, and papers connected with this Appeal to the Court of First Instance of the City of Manila are correct, and that they are all the papers which pertain to this case.

Adjustment of the filing fee in this case will be made by means of an inter-bureau voucher.

(S'g'd) H. B. McCOY,
Insular Collector of Customs.

W. E. B./1 sp.

Enclosures.
Sample forwarded with appeal.

11 8149/219.

Manila, July 18, 1911.—Secretary of Finance and Justice expressing opinion on decisions in the matter of certain protests filed by Carlos Gsell, Manila, etc.

1st Indorsement.

July 21, 1911.

Respectfully transmitted to the Secretary, Board of Protests and Appeals, directing that the cases referred to herein be consolidated in one case and transmitted to the Court of First Instance as provided in Section 286 of Act No. 355.

The original protests and the decisions of this office thereon, together with all other pertinent papers, will be included in this record and forwarded to the Court.

(S'g'd) H. B. McCOY,
Insular Collector of Customs.

2nd Indorsement.

July 27, 1911.

Respectfully returned to the Insular Collector of Customs inviting attention to the copy of Entry No. 18256 and invoice in connection with Protest No. 8062, and draft of 3rd Indorsement to the Clerk, Court of First Instance, Manila.

No entries or invoices were made in connection with the remainder of protests transmitted herewith, for the reason that they are identical with Protest No. 8062.

(S'g'd) W. E. BLACK,
Secretary Board of Protests and Appeals.

12 The Government of the Philippine Islands.

Department of Finance and Justice, Manila.

July 18, 1911.

SIR: I have read your decisions on the matter of protests Nos. 8062, 8069, 8110, 8189, 8209, 8210, 8267, 8373, 8516, 8517 and 8556, filed by Carlos Gsell, Manila, against the decision of the Insular Collector of Customs, acting as Collector of Customs for the Port of Manila, as to the assessment of duty on certain merchandise, described under the following entry numbers, voucher numbers and dates of payment:

Entry No.	Voucher No.	Date paid.
18256	9297	Aug. 23, 1910
18598	9826	Aug. 26, 1910
20585	13337	Sep. 15, 1910
22913	19400	Oct. 20, 1910
22978	20847	Oct. 28, 1910
24480	21158	Oct. 29, 1910
25685	24816	Nov. 18, 1910
30910	34725	Jan. 11, 1911
3255	46338	Mar. 14, 1911
3256	46340	Mar. 14, 1911
5875	49938	Apr. 3, 1911

In my opinion such decisions ought to be revised by the Court of First Instance of the City of Manila, and you are therefore requested to certify and transmit your decisions, together with the entries, invoices and exhibits, and all other papers connected therewith, to the clerk of the court above mentioned.

Very respectfully, GREGORIO ARANETA,
Secretary of Finance and Justice.

To the Insular Collector of Customs, Manila.

13 Office of the Insular Collector of Customs.

The Government of the Philippine Islands, Bureau of Customs, Manila, P. I.

June 23, 1911.

In reply please refer to No. Protest No. 8062.

In the matter of Protest No. 8062, filed August 29, 1910, by Carlos Gsell, Manila, against the decision of the Insular Collector of Customs, acting as Collector of Customs for the Port of Manila, as to the assessment of any duty on certain merchandise described in Entry No. 18256, Voucher No. 9297, paid August 23, 1910.

Decision.

The claim in this case is against the classification of certain wool as "x x x wool not otherwise provided for—wool waste," under paragraph 135-*a* of the Philippine Customs Tariff of 1909 at ten per centum ad valorem, instead of as 'x x x wool not further advanced in condition than washed,' under paragraph 311, free of duty.

The testimony taken at the hearing, and further investigation, shows that the article in question is commercially known as "noils", consisting of short hairs of wool, and is what is left when the wool is being combed by a machine. The short hairs are not taken up by the machine and combed as are the long ones, but leave the combing machine again in a mass which is neither combed nor waste.

14 In combed wool the hairs are parallel, while waste consists of refuse or broken particles thrown off in the process of manufacture. It is shown that ninety-two per cent of this article is again used for manufacturing purposes, and therefore may not be considered as waste.

This is neither wool advanced in value, nor wool waste. The wool that has been extracted from this article here imported might be properly deemed as "wool combed" under paragraph 135, but in my opinion this article may not properly be so classed, as no process has been applied to it which has advanced it in value or improved its condition.

Protest numbered 8062 is therefore for the foregoing reasons sustained. The entry in question will be reliquidated accordingly and the corresponding refund made.

H. B. McCOY,
Insular Collector of Customs.

W. E. B./1 sp.

Copies furnished Appraiser of the Port, Chief Liquidator, and all Collectors of Customs, sub-entry ports.

Not yet, copies retained with protest.

W. E. B.,
Secretary Board of Protests and Appeals.

Jul- 20, 1911.

15 MANILA, May 4th, 1911.

W. E. Black, Esq., Secretary Board of Protests and Appeals, Customs House, Manila, P. I.:

Re Noils Protest No. 8062.

In connection with hearing we had to-day regarding my Protest No. 8062 on Entry No. 18256, I beg to submit my arguments herewith in writing:—

For the Noils imported by me for manufacturing wool hats duty has been charged according to Pos. 135*a*. Customs Tariff of the Philippine Islands 1909; the appraisers declaring Noils to be Wool waste.

Pos. 135*a* reads:—

Wool, not otherwise provided for,—

(*a*) Combed, prepared for yarns, wool waste,

Ten per centum ad valorem.

I claimed that the Noils imported by me fall under Pos. 311, which reads: * * *

Free List. Bristles, Animal hair & Wool not further advanced than washed.

At hearing I submitted samples of unwashed wool, washed wool, Bradford noils, Mulhouse Noils, American noils and wool waste.

The question is: What are Noils?—Are they Washed wool, Combed wool or Waste wool?

16 Noils are the short hairs of the wool. When wool is being combed by machine, the short hairs are not gripped by the tools, while the long ones are being gripped and combed. The short hairs leave the combing machine again in the same state as they have been put into same, they are not parallel and therefore not combed. They are "Washed wool" and ought to fall under Pos. 311, as there is no provision made for wool between the washing and combing process.

Tariff Pos. 311 deals with wool not further advanced than washed.

Wool, which is dealt with according to Pos. 135*a* must be at least combed.

As above stated the samples of the different Noils imported by me show that the individual hairs of same are not parallel, which would be the case, of they were combed; this being the purpose of the combing. My Noils can therefore not fall under Pos. 135.

Wool waste consists of refuse or broken particles thrown off in the process of manufacture. My Noils contain about 5-7% of waste. 92% are therefore good wool of short length; it is certainly not right to declare this as waste. With the same right all wool could be declared as waste, as there is a small percentage of waste even in the best wool.

The present style demands long haired cloth, which accounts for the fact that most European combing machines are regulated so that Noils of a comparatively great length result. When short haired cloth is in style a much greater quantity of combed wool results out

of the same quantity of raw material, giving less Noils. This
17 proves again that Noils cannot be called "Wool waste."

Taking the extremes: The combing machine is regulated to take only the longest hair of the wool, then 80% and more of Noils might result. If the combing machine is adjusted to take short hair only a small percentage of noils is left. Noils cannot possibly be defined as Wool waste. (I used Noils for the manufacture of felt hats, because the short and thin hairs of the wool give a lighter hat and finer felt, than long haired wool.)

Why was Wool put on the Free-list?

The only reason for this is that there is some local industry, which is to be protected by the Free Entry of Wool, which must be imported, as there is no home supply. As much as I know I am the only importer of wool for manufacturing purposes and therefore hope that your Hon. Board will find, as above proven.

Noils may enter under Pos. 311 of the Customs Tariff of the Phlippine Islands 1909.

Yours respectfully,

(Sgd.) CARLOS GSELL.

18 MANILA, August 27th, 1910.

The Insular Collector of Customs, Manila, P. I.

SIR: I have the honour to file herewith a protest concerning the liquidation of the following goods:

A C B D 1/9—9 bales Wool

arrived in this port on S/S "Isla de Panay" on July 29th, 1910, Reg. Nr. 412, Entry Nr. 18256, Voucher Nr. 9297, Duties P333.78 paid on August 23rd.

These goods have been entered and liquidated under Paragraph Nr. 135 of the Tariff at ten per cent ad valorem according to your communication dated August 1, (Nr. 7693-267).

Now, I am of the opinion that this article is entitled to pass under the "Free List" (Tariff Section 311), being not "further advanced in condition than washed," having not passed any combing or carding process. Every original lot of wool directly deriving from the sheep consists partly of long and comparatively coarse fibers and partly of short and supple ones. The first mentioned long and coarse fibers are the proper material fit for the manufacture of woolen textiles whilst the short and soft fibers are useless for this purpose, but are especially employed in the manufacture of felt hats and other industries. In order to separate these two classes of fibers of quite different qualities the original wool has to pass of course some machinery. My felt hat Factory consumes this material for
19 the purpose of obtaining a mild and soft hat, but is a'le to work up at any time the original material as produced directly from the sheep, if it attaches less value to these qualities of the finished felt.

The wastes mentioned under Tariff Section 135*a*, resulting from the combing or carding machines used in the manufacture of woolen

textiles consist of broken fibers unfit for the manufacture of felt hats.

Trusting that the foregoing protest will find your approval,

Very respectfully yours,

(Sgd.) pp. CARLOS GSELL.
CHARLES OTT.

Sample supplies with protest.
Sample forwarded with appeal.

Entry No. 18256.
Voucher No. 9297.
Paid Aug. 23rd. 1910.
Amount P333.78.

Manila Customs House.

Board of Protests and Appeals.

I hereby certify that this protest (No. 8062) has been filed with me in accordance with provisions of Section 286 of Act No. 355 of the United States Philippine Commission.

(Sgd.) W. E. BLACK,
Secretary of the Board.

20 830.

Code word "Statariab."

PARIS, June 11th, 1910.

Invoice No. 1353a on the following goods shipped pr. Steamer "Isla de Panay" from Liverpool to Manila unto order and for a/c and risk of Mr. Carlos Gsell, Manila.

Wool.
A G B L 1/9. 9 bales.
Manila

	Gross kilos.
No. 1	283.170
2	250.260
3	238.600
	771.030
Tare (Kos. G. 350 per bale)	19.050
Net Kos.	752. —

Lot 6766 (repacked from Steinbrenner bales 1-4.)

No. 4	257.810
5	254.190
6	273.230
7	259.890

8	252.360
9	254.620
Tare (Kos. 6.350 per bale)	1552.100
Tare	38.100
Net Kos.	1514. —

Lot 6768 (re-packed from Steinbrenner bales 5-16.)
Entry No. 18256.
Date

Invoice.
Order 1324/N. O. 1549.

752 Kos. Wool,	B. Ayres	Supra.	Lot 5763 at Frs	3 60	Frs.. 2707 20
1514 " "	Australian,	"	6768 " "	4 10	" .. 6207 40
					8914 60
Less 3%					267 45
Frs.					8647 15

E. & O. E.

Packing Frs. 45 included.
(Sgd.) P. Por. HENRY ALFREDO GSELL.
O. SICBUCHUAR.

A true copy.
(Sgd.) W. E. BLACK,
Secretary, Board on Protests & Appeals.

21 *Invoice.*

PARIS, June 15th, 1910.

Invoice of wool purchased by Carlos Gsell, of Manila from Henry Alred Gsell, of Paris, to be shipped per S. S. "Isla de Panay" from Liverpool to Manila.

Marks and Numbers. Description. Price. Amount. Consular Corrections.

A true copy.
(Sgd.) W. E. BLACK,
Secretary Board on Protests & Appeals.

(Signature of purchaser or seller or agent of either.)

Consular Form No. 140.

— of authority conferred in paragraph 1, section 2844 Statutes of the United States, as amended by the Act of Congress of June 28, 1906.

Consular Certificate.

The undersigned, Insular Deputy Consul-General of United States, do hereby certify that, on this 15th June, A. D., 1910, the — in the indorsement hereof was produced to — of the annexed declaration.

I certify that I am satisfied that the person making the declaration hereto annexed is the person he represents to be, and that the actual market value or wholesale — of the merchandise described in the said invoice in the commercial markets of the country at the time of exportation is correct and true, excepting as noted by me upon said invoice, or respecting which I shall make special
22 communication to the proper authorities.

"I further certify that the annexed American declaration was su-scribed and sworn to consular service before me.

$2.50. — 17 June, 1910.

Fee Stamp.

— hand and seal of office the day and year —.

(Sgd.) B. F. YOST,
Insular Deputy Consul-General of the U. S.

— the value of P5.00 have been affixed to the — invoice.)

Consular Form No. 138.

Declaration of Purchaser or Seller or Duly Authorized Agent of Either.

I, the undersigned, do solemnly and truly declare that I am the owner of the merchandise in the within invoice mentioned and described; that the said invoice is in all respects correct and true, and was made at Paris, whence said merchandise is to be exported to the United States of America; that said invoice contains a true and full statement of the time when, the place where, and the person from whom the same was purchased, and the actual cost thereof, price actually paid or to be paid therefor, and all charges thereon; that no discounts, bounties, or drawbacks are contained in said invoice but such as have been actually allowed thereon; that no different invoice of the merchandise mentioned in said invoice has been or will be furnished to anyone, and that the currency in which said
23 invoice is made out is that which was actually paid or is to be paid for said merchandise.

I further declare —.

I further declare that it is intended to make entry of said merchandise at the port of —— in the United States of America.

Dated at Paris, this 15th day of June, 1910.

(Sgd.) P. Por HENRY ALFREDO GSELL.
O. SICBUCHUAR.

Duplicate.

Purchased by Importer.

Invoice No. 16434 issued in —.
Certified the 27th June, 1910.
Paris, France.
Date June 15th, 1910.
Seller Henry Alfredo Gsell, 118 Brd. do Clielig Paris.
Purchaser Carlos Gsell, Manila.
Name of vessel "Isla de Panay."
Port of shipment Liverpool.—Port of arrival Manila.
Port of entry do.
Value Fcs. 8647-15 — Contents: Wool.

Consular notations:

(To be filled in by consular officer.)

Custom-house indorsement:

No. —.
Importer —— ——.
Vessel —— ——.
From ——.
24 Arrived ——.
Kind of Entry: ——.
Marks, Quantity, and Contents: ——.

Consular officers will leave all of above indorsement blank. It is to be filled in only at the custom-house at the port of entry.

25 Government of the Philippine Islands, Bureau of Customs.

Duplicate Entry and Appraiser's Return.

Voucher No. 9297.

Port of Manila.

No. of Entry, 18256.

Date of Entry, Aug. 5, 1910.

Consumption:

(Class of entry: Consumption, Free or Warehouse.)

Entry and Return of Merchandise imported by Carlos Gsell in the S. S. "Isla de Panay" from Liverpool on July 29th, 1910, described in B/L No. 28 of said ship's manifest. Reg. No. 412.

Importer's Declaration.

Examination and Liquidation Return.

(On duplicate entry importers to fill in the first five columns only.)

Marks and Nos. A. C. B. D. Packages. 9 Bales. Description of Merchandise in terms of Tariff Law. Wool waste Ger. Gross Weight 2323 Ks. Dutiable Net Weight ad val. Dutiable Value Currency of Invoice. Amount 8647.15. Kind. frs. Value, U. S. Gold 1668.90. Tariff Par. a135. Rate of Duty 10%. Surtaxes in Per Cent. Total Duty B 166.89. Examiner's Calculation. No. 1-282. No. 9-255. 1544.00. 115.80. 9.071. 28. 1668.899. Computations verified. 33378. Paid Aug. 23 1910. (Sgd) E. Z. Cook, Customs Cashier. Bureau of Audits. Examined Aug. 22, 1910. H. R. Payment approved. As per your letter of Aug. 1st 1910. (No. 7693-267) "Under Protest". Reliquidated Duties refunded on Wt. 2338. A true official extract from Original Entry No. 18256 of all merchandise covered by Protest No. 8062. 26 (Sgd.) W. E. Black, Secretary, Board on Protests & Appeals. Liquidated by Jo S. No Weight. Country of origin Germany. Invoice No. 16434. Dated June 27th, 1910. At Paris. Rate of exchange in accordance with currency certificate 1 fr. = to .193 U. S. C. (Sgd.) Carlos Gsell. By J. Carlos, Agent.

I certify that the foregoing return is true and correct, as determined by the examination of the merchandise specified therein, made 8/16, 1910. (Sgd.) Leo J. Discher, Examiner. Triplicate Invoice filed. Pans 16434.

Examiner's Certificate.

For Examination Made Without the Presence of the Interested Importer or Agent.

It is hereby certified that the merchandise described in this return was examined without the interested importer or agent being present; that the sample packages were opened in my presence and examined, and the goods shown on the invoices as being packed in said sample packages were found complete and in good condition, except as noted in detail herein.

It is further certified that all goods removed from said sample packages for the purpose of examination were repacked and the packages securely reclosed under the personal supervision of —— ——.

Remarks: ——.

Manila, P. I., 8/16, 1910.

(Sgd.) LEO J. DISCHER, *Examiner.*

27 *Declaration of the Importer or Agent.*

District and Port of Manila, P. I.

J. Cashd of Manila being duly sworn, says that he is an a
of the firm of Carlos Gsell the identical person mentioned in
within entry, and that the said entry contains the true numb
weights, and quantities, according to the tariff, and a just and
account, classification, and description of all the goods, wares,
merchandise contained in the parcels described in the said en
as he verily believes; that according to the best of his knowl
and belief there is no invoice or bill of lading other than those
produced by him, and that they are in the state in which he actu
received them, and that nothing has been by him or to his kn
edge concealed or suppressed whereby the Government may be
frauded of the duty lawfully due on said goods, wares, and
chandise. And this deponent further says that the invoices
entry which he now presents contain, as to such goods, wares,
merchandise as are dutiable according to the value thereof, a
and faithful account of the actual cost and actual market v
thereof in the usual wholesale quantity, including the cost of
packing, packages, and receptacles thereof, and all other costs
cident to placing the said goods, wares, and merchandise in
dition ready packed for shipment to the Philippine Islands.

(S'g'd) J. CASHI

Su-scribed to in my presence and sworn to before me
28 5 day of Aug., 1910.

(S'g'd) C. P. NEUFFER,
Empowered to Administer Oath

Said declaration shall be made before the Collector of Cust
or his deputy deputized to administer oaths under the provision
section 21, Act 355.

(1) This entry accepted, recorded, compared with manifest,
mits issued and attached, duties estimated to be $275, United St
currency, and entry in duplicate forwarded to the Customs Cas
on Aug. 5, 1910.

(S'g'd) V. S.,
Chief Marine Division

(2) Received the estimated duties in the amount of P550
estimated arrastre in the amount of P4
Philippine currency, Receipt No. 44659, and duplicate entry w
Appraiser's permit attached forwarded to the Appraiser's Divis
and original permit to the Insular Surveyor on Aug. 8, 1910.

(S'g'd) E. Z. COOK,
Customs Cashier

(3 Examination of merchandise completed, return verified, and entry returned to the Appraiser of the Port on 8/18, 1910 examination made at ——.

(S'g'd) BALDWIN,
Act. Assistant Appraiser 1st Division.

(4) The within return verified, approved, and forwarded to the Liquidation Division on ——.

(S'g'd) HILL,
Assistant Appraiser of the Port.

29 (5) Return checked by —— ——, the original entry, after comparison, amended in accordance with this return by —— —— classifications, values, and weights found correct, entry in duplicate liquidated accordingly and forwarded to the Customs Cashier (through the Assistant Auditor) on Aug. 22, 1910.

(S'g'd) J. H. BURWELL,
Chief Liquidation Division.

Bu. of Audits.
Received, Aug. 22, 1910.
Revenue Div. —.

Duplicate Entry.

Voucher No. 9297.

Port of Manila, P. I.

Consumption.—Entry No. 18256.—Carlos Gsell. (Name of Importer.) Vessel S. S. "Isla de Panay" Sp. (Flag, class of vessel, and name.)—From Liverpool. Arrived July 29th, 1910. Reg. 412.

Deposit	P550.
Liquidated Aug. 20, 1910	P333.78
Increase duty due	P.....
Excess due Importer	P216.22

Adjusted —— —, 19—.

Coursing Record with Appraiser.

Return received Aug. 8, 1910.
Assigned to Examiner, ——.
Returned to Assistant Appraiser, ——.
Remarks, ——.

30 Examiner: Discher.

Estados Unidos de America.

Manila, I. F.

Sala —.

No. 150- C. A.

Por presentado el anterior escrito de apelación de la Aduana, hoy 28 de Julio de 1911, 3 p. m.

(Fdo.) J. McMICKING,
Escribano del Juzgado de 1. *a Instancia de Manila, I. F.*

31 Office of the Insular Collector of Customs.

In reply please refer to No. —, Protest No. 8069.

The Government of the Philippine Islands,
Bureau of Customs,
Manila, P. I.

Jul- 5, 1911.

In the Matter of Protest No. 8069, filed August 31, 1910, by Mr. Carlos Gsell, Manila, against the decision of the Insular Collector of Customs, acting as Collector of Customs for the Port of Manila, as to the assessment of any duty on certain merchandise described in Entry No. 18598, Voucher No. 9826, paid August 26, 1910.

Decision.

This claim for free entry of certain noils as "xx wool not further advanced in condition than washed" under paragraph 311 of the Philippine Customs Tariff of 1909, is sustained, in view of decision of this office on Protest No. 8062, of the same firm.

The entry in question will be reliquidated accordingly, and the corresponding refund made.

(S'g'd) H. B. McCOY,
Insular Collector of Customs.

W. E. B./1 sp.

Estados Unidos De America.

Manila, I. F.

Sala —.

No. 150, C. A.

Por presentado el anterior escrito de apelación de la Aduana, hoy 28 de Julio de 1911, 3 p. m.

Refer to Protest No. 8062.

(Fdo.) J. McMICKING,
Escribano del Juzgado de 1. *a Instancia de Manila, I. F.*

32 MANILA, August 30th, 1910.

The Insular Collector of Customs, Manila, P. I.

SIR: I have the honour to file herewith a protest concerning the liquidation of the following goods:

A C B F 1/10-10 Bales Wool arrived in this port on s/s "Antilochus" on August 1st 1910, Reg. Nr. 419, Entry Nr. 18598, Voucher Nr. 9826 Duties P378.98 paid on August 26th, 1910.

These goods have been entered and liquidated under Paragraph Nr. 135 of the Tariff at ten per cent ad valorem according to your communication of August 1st, (Nr. 7693-267).

Now, I am of the opinion that this articles is entitled to pass under the (Free List) Tariff Section 311, being "not further advanced in condition than washed", having not passed any combing or carding process. Every original lot of wool directly deriving from the sheep consists partly of long and comparatively coarse fibers and partly of short and supple ones. The first mentioned long and coarse fibers are the proper material fit for the manufacture of woolen textiles whilst the short and soft fibers are useless for this purpose, but are especially employed in the manufacture of felt hats and other industries. In order to separate these two classes of fibers of quite different qualities the original wool has to pass
33 of course some machinery. My felt hat Factory consumes this material for the purpose of obtaining a mild and soft felt, but is able to work up at any time the original material as produced directly from the sheep, if it attaches less value to the qualities of the finished felt.

The wastes mentioned under Tariff Section 135*a*, resulting from the combing or carding machines used in the manufacture of woolen textiles consist of broken fibers unfit for the manufacture of felt hats.

Trusting that the foregoing protest will find your approval,

Very respectfully yours,

(Sgd.) p. p. CARLOS GSELL.
CHARLES OTT.

Sample supplied with protest.

Entry No. 18598.
Voucher No. 9826.
Paid Aug. 26th, 1910.
Amount P378.98.

Manila Customs House.

Board of Protests and Appeals.

I hereby certify that this protest No. 8069 has been filed with me in accordance with provisions of Section 286 of Act No. 355 of the United States Philippine Commission.

(Sgd.) W. E. BLACK,
Secretary of the Board.

Encl. Samples.

34 C. A. No. 150.

Office of the Insular Collector of Customs.

The Government of the Philippine Islands, Bureau of Customs
Manila, P. I.

In reply please refer to No. — Protest No. 8110.

In the matter of Protest No. 8110, filed September 20, 1910, by Mr Carlos Gsell, Manila, against the decision of the Insular Collecto of Customs, acting as Collector of Customs for the Port of Manila as to the assessment of any duty on certain merchandise describe in Entry No. 20585, Voucher No. 13337, paid September 15 1910.

Decision.

This claim for free entry of certain noils as "x x wool not furthe advanced in condition than washed" under paragraph 311 of th Philippine Customs Tariff of 1909, is sustained, in view of decis ion of this office on Protest No. 8062, of the same firm.

The entry in question will be reliquidated accordingly, and th corresponding refund made.

(Sgd.) H. B. McCOY,
Insular Collector of Customs.

Estados Unidos de America.

Manila, P. I.

No. 150.

Sala —.

Por presentado el anterior escrito de apelación de la Aduana, hoy 28 de Julio de 1911, 3 p. m.

(Fdo.) J. McMICKING,
Escribano del Juzgado de 1. *a Instancia de Manila, I. F.*

Refer to Protest No. 8062.

35 8110.

MANILA, 20th Sept., 1910.

The Insular Collector of Customs, Manila, P. I.

SIR: I have the honour to file herewith a protest concerning th liquidation of the following goods:

A C B D 19/18-9 Bales Wool arrived in this port on s/s "Fernand Poo" on August 27th, 1910, Reg. No. 470, Entry No. 20585 Voucher No. 13337, Duties P383.26 paid on September 15th, 1910

These goods have been entered and liquidated under Paragraph No. 135 of the Tariff at ten per cent ad valorem according to you communication of August 1st, (No. 7693-267).

Now, I am of the opinion that this article is entitled to pass under the (Free List) Tariff Section 311, being "not further advanced in condition than washed," having not passed any combing or carding process. Every original lot of wool directly deriving from the sheep consists partly of long and comparatively coarse fibers and partly of short and supple ones. The first mentioned long and coarse fibers are the proper material fit for the manufacture of woolen textiles whilst the short and soft fibers are useless for this purpose, but are especially employed in the manufacture of felt hats and other industries: In order to separate these two classes of fibers of quite different qualities the original wool has to pass of course some
36 machinery. My Felt hat Factory consumes this material for the purpose of obtaining a mild soft felt, but is able to work up at any time the original material as produced directly from the sheep, if it attaches less value to these qualities of the finished felt.

The wastes mentioned under Tariff Section 135*a*, resulting from the combing or carding machines used in the manufacture of woolen textiles consist of broken fibres unfit for the manufacture of felt hats.

Trusting that the foregoing protest will find your approval,

Very respectfully yours,

(Sgd.) p. p. CARLOS GSELL.
CHARLES OTT.

Indexed.
Sample supplied with protest.
Entry No. 20585.
Voucher No. 13337.
Paid Sept. 15th, 1910.
Amount P383.26.
Encl. Samples.

Manila Customs House.

Board of Protests and Appeals.

I hereby certify that this protest (No. 8110) has been filed with me in accordance with provisions of Section 286 of Act No. 355 of the United States Philippine Commission.

(Sgd.) W. E. BLACK,
Secretary of the Board.

37 C. A. No. 150.

Office of the Insular Collector of Customs.

The Government of the Philippine Islands.

Bureau of Customs.

In reply please refer to No. —. Protest No. 8189.

MANILA, P. I., Jul- 5, 1911.

In the Matter of Protest No. 8189, Filed October 24, 1910, by Mr. Carlos Gsell, Manila, against the decision of the Insular Collector of Customs, acting as Collector of Customs for the Port of Manila, as to the assessment of any duty on certain merchandise described in Entry No. 22913, Voucher No. 19400, paid October 20, 1910.

Decision.

This claim for free entry of certain noils as "x x wool not further advanced in condition than washed" under paragraph 311 of the Philippine Customs Tariff of 1909, is sustained, in view of decision of this office on Protest No. 8062, of the same firm.

The entry in question will be reliquidated accordingly, and the corresponding refund made.

(Sgd.) H. B. McCOY,
Insular Collector of Customs.

Refer to Protest No. 8062.

Estados Unidos De America.
Manila, I. F.

Sala —. No. 150.

Por presentado el anterior escrito de apelación de la Aduana, hoy 28 de Julio de 1911, 3 p. m.

(Fdo.) J. McMICKING,
Escribano del Juzgado de 1. *a Instancia de Manila, I. F.*

38 8189.

MANILA, October 24th, 1910.

The Insular Collector of Customs, Manila, P. I.

SIR: I have the honor to file herewith a protest concerning the liquidation of the following goods:

A C D D A Nrs. 1/10—10 Bales Wool
arrived in this port on s/s
"Claudio Lopez y Lopez" Beg. Nr. 525, on September 23rd, Entry Nr. 22913, Voucher Nr. 19400, Duties P378.74 paid on October 20th.

These goods have been entered ("under protest") and liquidated under Paragraph Nr. 135 of the Tariff at ten per cent ad valorem according to your communication August 1st. (Nr. 7693-267).

This shipment is made of short wool which during the carding process of the wool has been rejected from the carding machine, because to be too short to be carded and cannot be considered to be carded wool, nor to be waste of wool and which commercial term in some quarters is "Noils." The purpose of the carding process is not to produce noils, but to produce carded wool and the short wool consequently remains raw wool just as the long wool, not further advanced than washed. Prices of short wool rejected from the cards are rather cheaper than long wool, but the mixture gives a better result in the manufacturing of hat bodies. It would not appear to be logical, that the more expensive long wool is on the free list, whilst short wool or noils of rather inferior value pay duty.

39 In former times I used to employ in the mixture for my hat bodies part of real wool waste, resulting from old cloth reopened, but this raw material has been definitely elim-ated as it gave no satisfactory result.

I therefore am of the opinion that this article is entitled to pass under the Free List.

Trusting that the foregoing protest will find your approval,

Very respectfully yours,

(Sgd.) p. p. CARLOS GSELL.
CHARLES OTT.

Indexed.
Entry No. 22913.
Voucher No. 19400.
Paid Oct. 20th, 1910.
Amount P378.74.

Sample supplied with protest.

Manila Customs House.

Board of Protests and Appeals.

I hereby certify that this protest (No. 8189) has been filed with me in accordance with provisions of Section 286 of Act No. 355 of the United States Philippine Commission.

(Sgd.) W. E. BLACK,
Secretary of the Board.

40 C. A. No. 150.

Office of the Insular Collector of Customs.

The Government of the Philippine Island.

Bureau of Customs.

In reply please refer to No. —. Protest No. 8209.

MANILA, P. I., Jul- 5, 1911.

In the Matter of Protest No. 8209, Filed November 1, 1910, by Carlos Gsell, Manila, against the decision of the Insular Collector of Customs, acting as Collector of Customs for the Port of Manila, as to the assessment of any duty on certain merchandise described in Entry No. 22978, Voucher No. 20847, paid October 28, 1910.

Decision.

This claim for free entry of certain noils as "xx wool not further advanced in condition than washed" under paragraph 311 of the Philippine Customs Tariff of 1909, is sustained, in view of decision of this office on Protest No. 8062 of the same firm.

The entry in question will be reliquidated accordingly, and the corresponding refund made.

(Sgd.) H. B. McCOY,
Insular Collector of Customs.

Refer to Protest No. 8062.

Estados Unidos De America.

Manila, I. F.

Sala —. No. 150, C. A.

Por presentado el anterior escrito de apelación de la Aduana, hoy 28 de Julio de 1911.

(Fdo.) J. McMICKING,
Escribano del Juzgado de 1.*a Instancia de Manila, I. F.*

41 8209.

MANILA, November 1st, 1910.

The Insular Collector of Customs, Manila, P. I.

SIR: I have the honor to file herewith a protest concerning the liquidation of the following goods:

A C D D Nrs. 1/8—8 Bales Wool.

Arrived in this port on s/s "C. Lopez y Lopez" Reg. Nr. 525, on September 23rd, Entry Nr. 22978, Voucher Nr. 20847, Duties P321.76 paid on October 28th.

These goods have been entered ("under protest") and liquidated under Paragraph Nr. 135*a* of the Tariff at ten per cent ad valorem according to your communication August 1st. (Nr. 7693-267).

This shipment is made of short wool which during the carding process of the wool has been rejected from the carding machine, because to be too short — carded and cannot be considered to be carded wool, nor to be waste of wool and which commercial term in some quarters is "Noils." The purpose of the carding process is not to produce noils, but to produce carded wool and the short wool consequently remains raw wool just as the long wool, not further advanced than washed. Prices of short wool rejected from the cards are rather cheaper than long wool, but the mixture gives a better result in the manufacturing of hat bodies. It would not appear to be logical, that the more expensive long wool is on the free list,
42 whilst short wool or noils of rather inferior value pay duty.

In former times I used to employ in the mixture for my hat bodies part of real wool waste, resulting from old cloth reopened, but this raw material has been definitely eliminated as it gave no satisfactory result.

I therefore am of the opinion that this article is entitled to pass under the Free List.

Trusting that the foregoing protest will find your approval.

Very respectfully yours,

(Sgd.) p. p. CARLOS GSELL.
CHARLES OTT.

Indexed.
Entry No. 22978.
Voucher No. 20847.
Paid Oct. 28th, 1910.
Amount P321.76.

Manila Customs House.

Board of Protests and Appeals.

I hereby certify that this protest (No. 8209) has been filed with me in accordance with provisions of Section 286 of Act No. 355 of the United States Philippine Commission.

(Sgd.) W. E. BLACK,
Secretary of the Board.

43 C. A. No. 150.

Office of the Insular Collector of Customs.

The Government of the Philippine Islands,
Bureau of Customs,
Manila, P. I.

In reply please refer to No. —, Protest No. 8210.

Jul- 5, 1911.

In the Matter of Protest No. 8210, filed November 2, 1910, by Carlos Gsell, against the decision of the Insular Collector of Customs, acting as Collector of Customs for the Port of Manila, as to the assessment of any duty on certain merchandise described in Entry No. 24480, Voucher No. 21158, paid October 29, 1910.

Decision.

This claim for free entry of certain noils as "xx wool not further advanced in condition than washed" under paragraph 311 of the Philippine Customs Tariff of 1909, is sustained, in view of decision of this office on Protest No. 8062, of the same firm.

The entry in question will be reliquidated accordingly, and the corresponding refund made.

(S'g'd) H. B. McCOY,
Insular Collector of Customs.

Refer to Protest No. 8062.

Estados Unidos de America,
Manila, I. F.

Sala —.

No. 150, C. A.

Por presentado el anterior escrito de apelación de la Aduana, hoy 28 de Julio de 1911, 3 p. m.

(Fdo.) J. McMICKING,
Escribano del Juzgado de 1. *a Instancia de Manila, I. F.*

44 8210

MANILA, November 2rd, 1910.

The Insular Collector of Customs,
Manila, P. I.

SIR: I have the honor to file herewith a protest concerning the liquidation of the following goods:

"A C DD B Nrs. 1/6—6 Bales Wool.

Arrived in this port on s./s. "Coblenz" Reg. Nr. 559, on Oct. 10th, Entry Nr. 24480, Voucher Nr. 21158, Duties P193.56, paid on October 29th.

These goods have been entered ("under protest") and liquidated under Paragraph Nr. 135*a* of the Tariff at ten percent ad valorem according to your communication August 1st (Nr. 7693-267).

This shipment is made of short wool which during the carding process of the wool has been rejected from the carding machine, because to be too short to be carded and cannot be considered to be carded wool, nor to be waste of wool and which commercial term in some quarters is "Noil." The purpose of the carding process is not to produce noils, but to produce carded wool and the short wool consecuently remains raw wool just as the long wool, not further advanced than washed. Prices of short wool rejected from the cards are rather cheaper than long wool, but the mixture gives a better result in the manufacturing of hat bodies. It would not appear to be logical, that the more expensive long wool is on the free list, whilst short wool or noils of rather inferior value pay duty.

45 In former times I used to employ in the mixture for my hat bodies part of real wool waste, resulting from old cloth reopened, but this raw material has been definitely elim-ated as it gave no satisfactory result.

I therefore am of the opinion that this article is entitled to pass under the Free List.

Trusting that the foregoing protest will find your approval.

Very respectfully yours,

(S'g'd) p. p. CARLOS GSELL.
CHARLES OTT.

Indexed.
Entry No. 24480.
Voucher No. 21158.
Paid Oct. 29th, 1910.
Amount P193.56.

Manila Customs House

Board of Protests and Appeals.

I hereby certify that this protest (No. 8210) has been filed with me in accordance with provisions of Section 286 of Act No. 355 of the United States Philippine Commission.

(S'g'd) W. E. BLACK,
Secretary of the Board.

46 C. A. No. 150.

Office of the Insular Collector of Customs.

The Government of the Philippine Islands,
Bureau of Customs,
Manila, P. I.

In reply please refer to No. —, Protest No. 8267.

Jul- 5, 1911.

In the Matter of Protest No. 8267, filed November 22, 1910, by Carlos Gsell, Manila, against the decision of the Insular Collector of Customs, acting as Collector of Customs for the Port of Manila as to the assessment of any duty on certain merchandise described in Entry No. 25685, Voucher No. 24816, paid November 18, 1910.

Decision.

This claim for free entry of certain noils as "xx wool not further advanced in condition than washed" under paragraph 311 of the Philippine Customs Tariff of 1909, is sustained, in view of decision of this office on Protest No. 8062, of the same firm.

The entry in question will be reliquidated accordingly, and the corresponding refund made.

(S'g'd) H. B. McCOY,
Insular Collector of Customs.

Refer to Protest No. 8062.

Estados Unidos de America,
Manila, I. F.

Sala —.

No. 150.

Por presentado el enterior escrito de apelación de la Aduana, hoy 28 de Julio de 1911, 3 p. m.

(Fdo.) J. McMICKING,
Escribano del Juzgado de 1. a. Instancia de Manila, I. F.

47 8267.

MANILA, November 22rd, 1910.

The Insular Collector of Customs, Manila, P. I.

SIR: I have the honor to file herewith a protest concerning the liquidation of the following goods:

A C D E, No. 1/10-10 Bales Wool Arrived in this port on s/s "Alicante" Reg. Nr. 586, on October 24th, Entry Nr. 25685, Voucher Nr. 24816, Duties P384.22 paid on November 18th.

These goods have been entered ("under protest") and liquidated

under paragraph Nr. 135A of the Tariff at ten per cent ad valorem according to your communication August 1st (Nr-. 7693-267).

This shipment is made of short wool which during the carding process of the wool has been rejected from the carding machine, because *to be* too short to be carded and cannot be considered to be carded wool, nor to be waste of wool and which commercial term in some quarters is "Noil." The purpose of the carding process is not to produce noils, but to produce carded wool and the short wool consecutively remains raw wool just as the long wool, not further advanced than washed. Prices of short wool rejected from the car-s are rather cheaper than long wool, but the mixture gives a better result in the manufacturing of hat bodies. It would not appear to be logical, that the more expensive long wool is on the free list, whilst short wool or noils of rather inferior value pay duty.

48 In former times I used to employ in the mixture for my hat bodies part of real wool waste, resulting from old cloth reopened, but this raw material has been definitely elim-nated as it gave no satisfactory result.

I therefore am of the opinion that this article is entitled to pass under the Free List.

Trusting that the foregoing protest will find your approval.

Very respectfully yours,

(Sgd.) p. p. CARLOS GSELL.
CHARLES OTT.

Indexed.

Entry No. 25685.
Voucher No. 24816.
Paid Nov. 18th, 1910.
Amount P384.22.

Manila Customs House.

Board of Protests and Appeals.

I hereby certify that this protest (No. 8267) has been filed with me in accordance with provisions of Section 286 of Act No. 355 of the United States Philippine Commission.

____ ____,
Secretary of the Board.

49 C. A. No. 150.

Office of the Insular Collector of Customs.

The Government of the Philippine Islands, Bureau of Customs, Manila, P. I.

In reply please refer to No. —, Protest No. 8373.

Jul- 5, 1911.

In the matter of Protest No. 8373, filed January 16, 1911, by Carl Gsell, Manila, against the decision of the Insular Collector of Cu toms, acting as Collector of Customs for the Port of Manila, as the assessment of any duty on certain merchandise described i Entry No. 30910, Voucher No. 34725, paid January 11, 1911.

Decision.

This claim for the free entry of certain noils as "xx wool not fu ther advanced in condition than washed" under paragraph 311 the Philippine Customs Tariff of 1909, is sustained, in view of deci ion of this office on Protest No. 8062 of the same firm.

The entry in question will be reliquidated accordingly, and th corresponding refund made.

(Sgd.) H. B. McCOY,
Insular Collector of Customs.

Refer to Protest No. 8062.

Estados Unidos de America, Manila, I. F.

No. 150. C. A.

Sala —.

Por presentado el anterior escrito de apelación de la Aduana, ho 28 de Julio de 1911, 3 p. m.

(Fdo.) J. McMICKING,
Escribano del Juzgado de 1. *a Instancia de Manila, I. F.*

50 8373.

MANILA, January 14th, 1911.

The Insular Collector of Customs, Manila, P. I.

SIR: I have the honor to file herewith a protest concerning th liquidation of the following goods:

A C D E No. 1/6-6 Bales Wool arrived in this port on s/s "Fe nando Poo" Reg. No. 711 on Dec. 19th, 1910, Entry No. 3091 Voucher No. 34725, Duties P247.10 paid on January, 11th, inst.

These goods have been entered ("under protest") and liquidate under Paragraph No. 135*a* of the Tariff at ten per cent ad valore according to your communication August 1st (Nr. 7693-267).

This shipment is made of short wool which during the carding process of the wool has been rejected from the carding machine, because *to* too short to be carded cannot be considered to be carded wool, nor to be waste of wool and which commercial term in some quarters is "Noil." The purpose of the carding process is not to produce noil, but to produce carded wool and the short wool consequently remains raw wool just as the long wool, not further advanced than washed. Prices of short wool rejected from the car-s are rather cheaper than long wool, but the mixture gives a better result in the manufacturing of hat bodies. It would not appear to be logical, that the more expensive long wool is on the free list, whilst short wool or noil of rather inferior value pay duty.

51 In former times I used to employ in the mixture for my hat bodies part of real wool waste, resulting from old cloth reopened, but this raw material has been definitely elim-ated as it gave no satisfactory result.

I therefore am of the opinion that this article is entitled to pass under the Free List.

Trusting that the foregoing protest will find your approval.

Very respectfully yours,

(Sgd.) p. p. CARLOS GSELL.
CHARLES OTT.

Indexed.

Samples enclosed.
Entry No. 30910.
Voucher No. 34725.
Paid Jan. 11th, 1911.
Amount P247.10.

Manila Customs House.

Board of Protests and Appeals.

I hereby certify that this protest (No. 8373) has been filed with me in accordance with provisions of Section 286 of Act No. 355 of the United States Philippine Commission.

(Sgd.) W. E. BLACK,
Secretary of the Board.

52 C. A. No. 150.

Office of the Insular Collector of Customs.

The Government of the Philippine Islands, Bureau of Customs.

MANILA, P. I., Jul- 5, 1911.

In reply please refer to No. —. Protest No. 8516.

In the matter of Protest No. 8516, filed March 20, 1911, by Mr. Carlos Gsell, Manila, against the decision of the Insular Collector of Customs, acting as Collector of Customs for the Port of Manila, as to the assessment of any duty on certain merchandise described in Entry No. 3255, Voucher No. 46338, paid March 14, 1911.

Decision.

This claim for free entry of certain noils as "xx wool not further advanced in condition than washed" under paragraph 311 of the Philippine Customs Tariff of 1909, is sustained, in view of decision of this office on Protest No. 8062, of the same firm.

The entry in question will be reliquidated accordingly, and the corresponding refund made.

(Sgd.) H. B. McCOY,
Insular Collector of Customs.

Estados Unidos de America, Manila, I. F.

No. 150, C. A.

Sala —.

Por presentado el anterior escrito de apelación de la Aduana, hoy 28 de Julio de 1911, 3 p. m.

(Fdo.) J. McMICKING,
Escribano del Juzgado de 1.a Instancia de Manila, I. F.

Refer to Protest No. 8062.

53 8516.

MANILA, March 18th, 1911.

The Insular Collector of Customs, Manila, P. I.

SIR: I have the honor to file herewith a protest concerning the liquidation of the following goods:

A E A Z No. ⅛—8 Bales of Wool arrived in this port on s/s "Alicante" on February 11th 1911, Reg. No. 76, Entry No. 3255, Voucher No. 46338, Duties P267.20 paid on March 14th, 1911.

These goods have been entered and liquidated under Paragraph No. 135 of the Tariff, at ten per cent ad valorem, according to your communication dated August 1st, 1910 (No. 7693—267).

This shipment is made of short wool which during the carding process of the wool has been rejected from the carding machine being too short to be carded and cannot be considered to be carded wool, nor waste of wool and which commercial term in some quarters is "Noil". The purpose of the carding process is not to produce noil, but to produce carded wool and the short wool consequently remains raw-wool just as the long wool, not further advanced than washed. Prices of short wool rejected from the cards are rather cheaper than long wool, but the mixture gives a better result in the manufacturing of hatbodies. It would not appear to be logical that the more expensive long wool is on the Free List whilst short wool or noils of rather inferior value pay duty.

54 In former times I used to employ in the mixture for my hatbodies part of real woolwaste, resulting from old cloth re-opened, but this raw-material has been definitely elim-ated as it gave no satisfactory result.

I therefore am of the opinion that this article is entitled to pass under the Free List.

Trusting that the foregoing protest will find your approval,

Very respectfully yours,

(Sgd.) CARLOS GSELL.

Entry No. 3255.
Voucher No. 46338.
Paid March 14, 1911.
Amount P267.20.
Samples enclosed.

Manila Customs House.

Board of Protests and Appeals.

I hereby certify that this protest (No. 8516) has been filed with me in accordance with provisions of Section 286 of Act No. 355 of the United States Philippine Commission.

(Sgd.) W. E. BLACK,
Secretary of the Board.

55 C. A. No. 150.

Office of the Insular Collector of Customs.

The Government of the Philippine Islands, Bureau of Customs.

MANILA, P. I., Jul- 5, 1911.

In reply refer to No. —. Protest No. 8517.

In the matter of Protest No. 8517, filed March 20, 1911, by Carl Gsell, Manila, against the decision of the Insular Collector Customs, acting as Collector of Customs for the Port of Manil as to the assessment of any duty on certain merchandise describ in Entry No. 3256, Voucher No. 46340, paid March 14, 1911.

Decision.

This claim for free entry of certain noils as "xx wool not furth advanced in condition than washed" under paragraph 311 of t Philippine Customs Tariff of 1909, is sustained, in view of decisi of this office on Protest No. 8062 of the same firm.

The entry in question will be reliquidated accordingly, and t corresponding refund made.

(Sgd.) H. B. McCOY,
Insular Collector of Customs.

Estados Unidos de America, Manila, I. F.

No. 150, C. A.

Sala —.

Por presentado el anterior escrito de apelación de la Aduana, h 28 de Julio de 1911, 3 p. m.

(Fdo.) J. McMICKING,
Escribano del Juzgado de 1.a Instancia de Manila, I. F.

Refer to Protest No. 8062.

56 8517.

MANILA, March 18th, 1911.

The Insular Collector of Customs, Manila, P. I.

SIR: I have the honor to file herewith a protest concerning t liquidation of the following goods:

A C D E A No. 7/20—14 bales of Wool arrived in this port s/s "Alicante" on February 11th, 1911, Reg. No. 76, Entry N 3256, Voucher No. 46340, Duties P576.90 paid on March 14th 191

These goods have been entered and liquidated under Paragra No. 135 of the Tariff, at ten per cent ad valorem, according to yo communication dated August 1st, 1910 (7693—267).

This shipment is made of short wool which during the carding process of the wool has been rejected from the carding machine being too short to be carded and cannot be considered to be carded wool, nor to be waste of wool and which commercial term in some quarters is "Noil". The purpose of the carding process is not to produce noil, but to produce carded wool and the short wool consequently remains raw-wool just as the long wool, not further advanced than washed. Prices of short wool rejected from the cards are rather cheaper than long wool, but the mixture gives a better result in the manufacturing of hatbodies. It would not appear to be logical that the more expensive long wool is on the Free List whilst short wool or noils of rather inferior value pay duties.

57 In former times I used to employ in the mixture for my hatbodies part of real woolwaste, resulting from old cloth reopened, but this raw-material has been definitively elim-ated as it gave no satisfactory result.

I therefore am of the opinion that this article is entitled to pass under the Free List.

Trusting that the foregoing protest will find your approval,

Very respectfully yours,

(Sgd.) CARLOS GSELL.

Indexed.
Sample supplied with protest.
Entry No. 3256.
Voucher No. 46340.
Paid March 14, 1911.
Amount P576.90.
Samples enclosed.

Manila Customs House.

Board of Protests and Appeals.

I hereby certify that this protest (No. 8517) has been filed with me in accordance with provisions of Section 286 of Act No. 355 of the United States Philippine Commission.

(Sgd.) W. E. BLACK,
Secretary of the Board.

58 C. A. No. 150.

Office of the Insular Collector of Customs.

The Government of the Philippine Islands, Bureau of Customs, Manila, P. I.

In reply please refer to No. —. Protest No. 8556.

Jul- 5, 1911.

In the matter of Protest No. 8556, filed April 6, 1911, by Carlo Gsell, Manila, against the decision of the Insular Collector of Customs, acting as Collector of Customs for the Port of Manila, as t the assessment of any duty on certain merchandise declared i Entry No. 5875, Voucher No. 49938, paid April 3, 1911.

Decision.

This claim for free entry of certain noils as "x x wool not furthe advanced in condition than washed" under paragraph 311 of th Philippine Customs Tariff of 1909, is sustained, in view of decisio of this office on Protest No. 8062 of the same firm.

The entry in question will be reliquidated accordingly, and th corresponding refund made.

(Sgd.) H. B. McCOY,
Insular Collector of Customs.

Estados Undios de America, Manila, I. F.

No. 150, C. A.

Sala —.

Por presentado el anterior escrito de apelación de la Aduana, ho 28 de Julio de 1911, 3 p. m.

(Fdo.) J. McMICKING,
Escribano del Juzgado de 1.a *Instancia de Manila, I. F.*

Refer to Protest No. 8062.

59 8556.

MANILA, April 6th, 1911.

The Insular Collector of Customs, Manila, P. I.

SIR: I have the honor t file herewith a protest concerning th liquidation of the following goods:

A E A Z, Nr. 9/12-4 Bales of Wool arrived in this port on s/s "C de Elizaguirre" on March 10th 1911, Reg. Nr. 133, Entrv Nr. 5875 Voucher Nr. 49938, Duties P144.68 paid on April 3rd, 1911.

These goods have been entered and liquidated under Paragraph Nr. 135a of the Tariff, at ten per cent ad valorem, according to you communication dated August 1st, 1910. (7693-267.)

This shipment is made of short wool which during the carding process of the wool has been rejected from the carding machine being too short to be carded and cannot be considered to be carded wool, nor waste of wool and which commercial term in some quarters is "Noil." The purpose of the carding process is not to produce noil, but to produce carded wool and the short wool consequently remains raw-wool just as the long wool, not further advanced than washed. Prices of short wool rejected from the cards are rather cheaper, than long wool, but the mixture gives a better result in the manufacturing of hat bodies. It would not appear to be logical that the more expensive long wool is on the Free List whilst short wool or noils of rather inferior value pay duty.

In former times I used to employ in the mixture for my
60 hat bodies part of real wool waste, resulting from old cloth reopened, but this raw material has been definitively elim-ated as it gave no satisfactory result.

I therefore am of the opinion that this article is entitled to pass under the Free List.

Trusting that the foregoing protest will find your approval,

Very respectfully yours,

(Sgd.) CARLOS GSELL.

Indexed.
Sample supplied with protest.
Entry No. 5875.
Voucher No. 49938.
Paid April 3rd, 1911.
Amount P144.68.
Samples enclosed.

Manila Customs House.

Board of Protests and Appeals.

I hereby certify that this protest (No. 8556) has been filed with me in accordance with provisions of Section 286 of Act No. 355 of the United States Philippine Commission.

(Sgd.) W. E. BLACK,
Secretary of the Board.

61 UNITED STATES OF AMERICA,
Philippine Islands:

In the Supreme Court of the Philippine Islands.

On April 30, 1912, the said Bill of Exceptions was duly filed in the Supreme Court of the Philippine Islands.

Thereafter, and on July 18, 1912, counsel for plaintiff and appellant filed his brief in the Supreme Court.

Thereafter, and on July 29, 1912, the Solicitor-General, counsel for the appellee, filed his brief in this court.

The case was submitted on August 21, 1912, and the Supreme Court rendered the following decision on February 20, 1913.

Decision.

The record shows that the appellant imported into the Philippine Islands a certain amount of merchandise, which he declared to be "9 bales wool waste", but which was invoiced in the bill of lading as "9 bales wool." The Collector of Customs for the port of Manila classified said merchandise as "wool waste" under paragraph (*a*) of Article 135 of the Philippine Customs Tariff of 1909, and assessed duty thereon at 10% ad valorem. The duty thus assessed was paid under protest upon the ground that the merchandise in question should have been assessed for duty as "wool not further advanced in condition than washed", and admitted free of duty under paragraph 311 of said Tariff law.

An appeal was taken to the Insular Collector of Customs against the said classification and assessment of duty. The Insular
62 Collector, after hearing the protest of the importer, modified the original classification and assessment and admitted said merchandise free of duty. In the second decision of the Insular Collector said merchandise was classified as "noils". The Insular Collector held that the merchandise in question was commercially known as "noils."

The decision of the Insular Collector of Customs was called to the attention of the Secretary of Finance and Justice on the 18th of July, 1911, and said Secretary, pursuant to law, requested the Collector of Customs to certify and transmit his said second decision, together with the entries, invoices, exhibits and all other papers connected therewith, to the clerk of the Court of First Instance of the city of Manila, for revision by the Court of First Instance, which request was complied with on the 28th of July, 1911.

Later the question as to the proper classification of said merchandise was presented to the Court of First Instance of the city of Manila. After a careful consideration of the record, the Honorable Charles S. Lobingier, in a very carefully prepared opinion, modified the conclusion of the Insular Collector of Customs and held that the merchandise in question should have been classified and assessed for duty under paragraph (*b*) of Article 303 of said Tariff Law and rendered a judgment in accordance with said conclusion.

From that judgment the plaintiff appealed and in this court made the following assignments of error:

1st. The Court of First Instance erred in holding that the
63 merchandise in question is "wool further advanced in condition than washed."

2nd. The Court of First Instance erred in not holding that the merchandise in question is "wool not further advanced in condition than washed."

After a careful examination of the record brought to this court, with special reference to the said assignments of error, we are persuaded and so hold that the classification of the merchandise in question made by the Court of First Instance is in accordance with the facts and the law applicable thereto, and without a further dis-

cussion of the questions involved and without prejudice to the writing of an opinion in which such questions may be more fully discussed, the judgment of the Court of First Instance is hereby affirmed with costs.

After the expiration of 20 days from the date hereof let judgment be entered in accordance herewith, and 10 days thereafter let the record be remanded to the court from whence it came, for execution.

It is so ordered.

(Sgd.) JOHNSON, *J.*

With whom concur:

C. S. ARELLANO, *C. J.*
FLORENTINO TORRES,
VICTORINO MAPA,
J. J.

I dissent: The decision should be reversed.

GRANT T. TRENT, *J.*

64 Thereafter, and on March 13, 1913, the following final judgment was entered:

"The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 20th day of February, A. D. nineteen hundred and thirteen.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 11th day of March nineteen hundred and twelve, and from which the above-entitled appeal was taken, be, and the same is hereby affirmed, with costs.

It is further ordered that the appellee recover from the appellant the sum of P40.00 as costs."

Thereafter, and on March 19, 1913, the attorneys for the plaintiff and appellant excepted to the decision rendered.

Thereafter, and on March 24, 1913, the attorneys for plaintiff and appellant filed the following petition:

"Now comes Carlos Gsell, plaintiff herein and says: That on or about the 13 day of March, 1913, the Supreme Court of the Philippine Islands entered a judgment herein in favor of the appellee and defendant in error and against the appellant and plaintiff in error in which judgment and proceedings had prior thereto in this cause certain errors were committed to the prejudice of this plaintiff all of which will more in detail appear from the assignment of
65 errors which is filed with this petition.

Wherefore this plaintiff prays that a writ of error may be issued in this behalf out of the Supreme Court of the United States for the correction of errors so complained of, and that a transcript

of the record, proceedings and papers in this cause duly authenticated, may be sent to the Supreme Court of the United States.

(Sgd.) ROHDE & WRIGHT,
Attorneys for Carlos Gsell."

"The plaintiff in error in this case in connection with the petition for a writ of error, makes the following assignment of errors which he avers exist:

1. The Supreme Court of the Philippine Islands erred in affirming the judgment of the Court of First Instance of Manila, and thereby in effect holding that the mechanical process of combing the long fiber out of ordinary washed wool, leaving the shorter fibers as a residue known commercially as noils, is a process which advances the short fibers in condition or value, contrary to the Act of Congress of August 5th, 1909 entitled 'An Act to Raise Revenue for the Philippine Islands and for Other Purposes' and contrary to paragraphs 303 and 311 of Sec. 8 of said Act of Congress.

2. The Supreme Court of the Philippine Islands erred in affirming the judgment of the Court of First Instance of Manila, and thereby in effect holding, that noils, being the residue of short fibers of raw washed wool after the long fibers have been combed
66 out, is dutiable under subparagraph (*b*) of paragraph 303 of Sec. 8 of the — Aug. 5th 1909 entitled an Act of Congress to Raise Revenue for the Philippine Islands and for Other purposes", contrary to the provisions of said Act of Congress and contrary to paragraph 311 of Sec. 8 thereof.

(Sgd.) ROHDE & WRIGHT,
Attorneys for Carlos Gsell."

67 UNITED STATES OF AMERICA:

In the Supreme Court of the Philippine Islands.

R. G., No. 7958.

CARLOS GSELL, Appellant and Plaintiff in Error,
versus
THE INSULAR COLLECTOR OF CUSTOMS, Appellee and Defendant in Error.

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Judges of the Supreme Court of the Philippine Islands, Greeting:

Because in the records and proceedings, and also in the rendition of the judgment of a plea which is in the said Court before you between Carlos Gsell, Plaintiff and The Insular Collector of Customs, defendant, wherein it appears a manifest error has happened, to the great damage of the said Carlos Gsell, as by his complaint appears. We being willing that the error, if any has been, should be duly corrected, and full and speedy justice done to the parties

aforesaid in this behalf, do command you, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the City of Washington on the 25th day of July next in the said Supreme Court, to be then and there held, that the records and proceedings aforesaid, being
68 inspected, the said Supreme Court may cause further to be done to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 26th day of March in the year of Our Lord One Thousand Nine Hundred and thirteen and of the Independence of the United States of America the One Hundred and Thirty-seventh.

[Seal Corte Suprema, Islas Filipinas.]

V. ALBERT,
Clerk Supreme Court, P. I.

The foregoing writ of error is allowed this 26" day of March, 1913, upon the filing by plaintiff and Appellant of a bond with good and sufficient surety, in the sum of One Thousand Dollars, United States Currency, to prosecute the said writ of error to effect and answer all costs if he fails to make good his plea.

Let a certified copy of the record testimony, stipulation, and all proceedings herein, be tra-scripted forthwith to said Supreme Court of the United States.

E. FINLEY JOHNSON,
Associate Justice of the Supreme Court of the Philippine Islands.

69 UNITED STATES OF AMERICA.

In the Supreme Court of the Philippine Islands.

R. G. No. 7958.

CARLOS GSELL, Appellant and Plaintiff in Error,
versus
THE INSULAR COLLECTOR OF CUSTOMS, Appellee and Defendant in Error.

Know all men by these presents: That we, Carlos Gsell, as principal, and Wm. J. Rohde and O. H. Landsvater, as sureties, are held and firmly bound unto the Insular Collector of Customs in the sum of One Thousand Dollars to be paid to the said Insular Collector of Customs his attorneys, or assigns; to which payment, well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals

and dated this 26th day of March in the year of Our Lord One Thousand Nine Hundred and Thirteen.

Whereas, lately in the Supreme Court of the Philippine Islands in a suit pending in said Court between Carlos Gsell, Plaintiff, and The Insular Collector of Customs, defendant a judgment was rendered dismissing the suit of the said plaintiff and the said Carlos Gsell having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the judgment in the said suit and a citation directed to the Insular Collector of Customs citing and admonishing the said Insular Collector of Customs,
70 to be and appear at a session of the Supreme Court of the United States to be holded at the City of Washington on the 25th day of July next.

Now, the condition of the above obligation is such that if the said Carlos Gsell shall prosecute the said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation be void else to remain in full force and virtue.

(S'g'd) CARLOS GSELL.
" O. H. LANDSVATER.
" WM. J. ROHDE.
" H. O. LANDSVATER.

Approved:
(S'g'd) E. FINLEY JOHNSON,
Associate Justice of the Supreme Court of the Philippine Islands.

O. K.
(S'g'd) IGNACIO VILLAMOR,
Attorney General.

71 UNITED STATES OF AMERICA.

In the Supreme Court of the Philippine Islands.

R. G. No. 7958.

CARLOS GSELL, Appellant and Plaintiff in Error,
vs.
THE INSULAR COLLECTOR OF CUSTOMS, Appellee and Defendant in Error.

To the Insular Collector of Customs:

Your are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the City of Washington on the 25 day of July next, pursuant to a writ of error filed in the Clerk's Office of the Supreme Court of the Philippine Islands wherein Carlos Gsell is plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected and speedy justice be done to the parties in this behalf.

Given under my hand at the City of Manila in the Philippine Islands, this 26" day of March in the year of Our Lord one thousand nine hundred and thirteen.

E. FINLEY JOHNSON,
Associate Justice of the Supreme,
of the Philippine Islands.

Office of the Attorney General. Received copy this Mar. 26, 1913. Ignacio Villamor.

W. J. Rohde being first duly sworn on oath says that he served a copy of the foregoing citation on the attorney-general of the Philippine Islands on the 26th day of March, 1913, in the City of Manila, P. I.

WM. J. ROHDE.

72 UNITED STATES OF AMERICA.

Supreme Court of the Philippine Islands.

R. G. No. —.

CARLOS GSELL, Plaintiff and Appellant,
versus
THE INSULAR COLLECTOR OF CUSTOMS, Defendant and Appellee.

Precipe of Plaintiff in Error.

Clerk of the Supreme Court of the Philippine Islands:

We hereby request that you certify to the Supreme Court of the United States a copy of the entire record in the above entitled cause, consisting of the bill of exception prepared in the court of first Instance and the documents and Exhibits therein mentioned and thereto attached paged 1 to 43, both inclusive, and the original Exhibits "A", "B", "C", "D", "E", and "F".

Manila, P. I., April 1st, 1913.

ROHDE & WRIGHT,
Attorneys for Plaintiff in Error,
103 *Anloague, Manila, P. I.*

IGNACIO VILLAMOR,
Attorney General.

73 UNITED STATES OF AMERICA.

Supreme Court of the Philippine Islands.

I, V. Albert, Clerk of the Supreme Court do hereby certify that the foregoing sixty-six typewritten pages contain a true and correct transcrip and translation of the record and proceedings had in case No. 7958 in which Carlos Gsell is plaintiff and the Insular Collector

of Customs is defendant, as the same appears from the records and files now remaining in my custody and control; and in obedience to the foregoing Writ of Error I herewith transmit the same to the Supreme Court of the United States this thirteenth day of June, 1913.

V. ALBERT,
Clerk Supreme Court, P. I.

[Seal Corte Supremas, Islas Filipinas.]

VA rm

74 UNITED STATES OF AMERICA.

Supreme Court of the Philippine Islands, March 13, 1913.

File No. 7958.

CARLOS GSELL, Plaintiff and Appellant,
vs.
THE INSULAR COLLECTOR OF CUSTOMS, Defendant and Appellee.

Judgment.

The Court having regularly acquired jurisdiction for the trial of the above-entitled cause submitted by both parties for decision, after consideration thereof by the Court upon the record, its decision and order for judgment having been filed on the 20th day of February, A. D. nineteen hundred and thirteen.

By virtue thereof it is hereby adjudged and decreed that the judgment of the Court of First Instance of Manila, dated the 11th day of March nineteen hundred and twelve, and from which the above-entitled appeal was taken, be, and the same is hereby affirmed, with costs.

It is further ordered that the appellee recover from the appellant the sum of P40.00, as costs.

(Sgd.) V. ALBERT,
Clerk of the Supreme Court of the Philippine Islands.

[Seal Corte Suprema, Islas Filipinas.]

Certified correct,
V. ALBERT
Clerk Supreme Court, P. I.

Endorsed on cover: File No. 23,952. Philippine Islands Supreme Court. Term No. 303. Carlos Gsell, plaintiff in error, vs. The Insular Collector of Customs. Filed December 3d, 1913. File No. 23,952.

14

Office Supreme Court, U. S.
FILED
APR 13 1915
JAMES D. MAHER
CLERK

IN THE

Supreme Court of the United States

No. 303. 31

CARLOS GSELL, *Plaintiff in Error,*

vs.

THE INSULAR COLLECTOR OF CUSTOMS,

Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

HARRY W. VAN DYKE,
Counsel for Plaintiff in Error.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

CONTENTS.

Page

Statement 1
Assignment of errors 7
Argument:
The Position of the court below 9
Point I.—Proceeding before Court of First Instance was in nature of review on appeal; burden was on Philippine Government, as appellant, to show that the importation was not of character to entitle it to admission free of duty, or else that construction of Philippine tariff law by Insular Collector of Customs was clearly erroneous; doubt should have been resolved in favor of importer; classification by Insular Collector should have been presumed to be correct 15
Point II.—Interpretation below of duty-imposing provision (Sec. 303) of said act was erroneous, in that it was in disregard of principles this court has held applicable in similar cases; purpose of Congress in placing raw wool in free list should have been considered, also object of process from which wool of character in question resulted; it should have been held to be admissible free of duty under Sec. 311, placing in free list "wool not further advanced in condition than washed".... 27
Point III.—The wool in question was not "wool waste" within meaning of that term as used in Sec. 135 (*a*) of said tariff act; Plaintiff in Error not estopped by declaration of it as wool waste from claiming here that it ought to have been admitted free..... 48
Point IV.—Allegations of fact made in argument of counsel for Philippine Government below in support of contention that wool here involved was in condition further advanced

Page

than washed were not proven, nor was any evidence even tending to prove them submitted; they were incompetent as evidence unless facts of which the court could take judicial notice; in any event they were immaterial, ought not to have been considered below, and, under rulings of this court, may not be considered here 65

Point V.—Court below erred in not having reversed trial court on ground that there was no evidence whatever to warrant its judgment 70

Conclusion 74

Appendix: Affidavit of Carlos Gsell..... 79

AUTHORITIES CITED.

Am. Net & Twine Co. v. Worthington, 141 U. S., 468 .....20, 54, 75

Arthur v. Unkart, 96 U. S., 118..... 18

Bagsa v. Nagramada, 11 Phil., 177..... 49

Behn, Meyer & Co. v. Campbell, 205 U. S., 402..8, 67, 71

Bogle v. Magone, 152 U. S., 623..... 31

Brown v. Piper, 91 U. S., 37..... 67

Cadwalader v. Jessup, etc., Paper Co., 149 U. S., 350.. 29

Cooley on Taxation, 215, 216..... 19

Dwight v. Merritt, 140 U. S., 213..... 29

Encyclopaedie Americana, vol. 16, title "Waste".... 52

Erhardt v. Schroeder, 155 U. S., 124..... 19

Fink v. United States, 170 U. S., 584..... 31

Frazee v. Moffitt, 20 Blatchford, 267..... 77

Garr v. Scudd, 11 Exch., 190..... 20

Hartranft v. Wiegman, 121 U. S., 609.....20, 76

Holden v. Clancy, 58 Barb., 590..... 39

Isaacs v. Jones, 148 U. S., 648..... 31

Junge v. Hedden, 146 U. S., 233..... 78

Lawrence v. Allen, 7 How., 785.....39, 78

Magone v. Wiederer, 159 U. S., 555..... 29

Matheson v. United States, 71 Fed. Rep., 394..... 21

Page
McCoy v. Hedden, 38 Fed. Rep., 89..... 21
Patten v. United States, 159 U. S., 500.....35, 53, 61
Powers v. Barney, 5 Blatchford, 202..... 20
Rex v. Wheeler, 2 B. & Ald., 349..... 39
Rice v. United States, 53 Fed. Rep., 910..... 21
Saltonstall v. Wiebusch, 156 U. S., 601..... 62
Seeberger v. Castro, 153 U. S., 32.....38, 76
Sonn v. Magone, 159 U. S., 417.....29, 78
Tide Water Oil Co. v. United States, 171 U. S., 210.. 29
United States v. Isham, 17 Wall., 496..... 20
United States v. Potts, 5 Cranch, 284..... 77
United States v. Schoverling, 146 U. S., 76..... 29
United States v. Wilson, 1 Hunt's Merchants' Magazine, 167 77
Worthington v. Robbins, 139 U. S., 337.....29, 76

IN THE

Supreme Court of the United States

No. 303.

CARLOS GSELL, *Plaintiff in Error,*

vs.

THE INSULAR COLLECTOR OF CUSTOMS,

Defendant in Error.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT.

The above entitled case came to this court by virtue of a writ of error to the Supreme Court of the Phillippine Islands in a matter involving the classification for customs duty of an importation of wool and the interpretation or construction of certain provisions of an act of the Congress of the United States, approved the 5th of August, 1909, entitled "an act to raise revenue for the Phillippine Islands and for other purposes" (36 Stats., pp. 130 *et seq.*), otherwise known as the Philippines tariff act.

With this case were consolidated ten others, wherein the merchandise imported, the questions presented and the decisions were of precisely the same character and in which the same persons were parties. (See order of the Insular Collector of Customs headed "1st Indorsement," R., p. 6, and order of the Secretary of Finance and Justice, R., p. 7.) "No entries or invoices were made in connection with the remainder of protests transmitted herewith," the Secretary of the Board of Protests and Appeals explained when returning the record to the Insular Collector of Customs (R., p. 6), "for the reason that they are identical with protest No. 8062"—i. e., that in the test case at bar.

Plaintiff in Error was a manufacturer of felt hats (R., p. 10, fol. 19). The particular importation in question in this test case (protest No. 8062) is stated in the invoice herein to have been *"Wool, A. G. B. L.* 1-9, 9 *bales"* (R., p. 11). Further on in the same document it is described as "752 *Kos. Wool, B. Ayres Supra"* (3 bales) and "1514 *Kos. Wool, Australian"* (6 bales). The invoice also shows that the wool was purchased from Henry Alfredo Gsell of Paris, where the document is dated; that the purchase price was Fr. 8,647 (estimated to have been the equivalent of $1,-668.90, United States gold, R., p. 15), and that the shipment was "pr. Steamer 'Isla de Panay' from Liverpool to Manila unto order and for a/c and risk of Mr. Carlos Gsell, Manila," the Plaintiff in Error herein.

The "importer's declaration," however—or, rather, the "examination and liquidation return," for the document appears to be of that nature and is headed by both of these designations in the record (p. 15)—which was made after the arrival of the shipment at Manila on the 29th of July, 1910, and which was not signed by the Plaintiff in Error himself but by an agent—describes the merchandise contained in the nine bales in question, not as "wool" merely,

but as *"wool waste Ger."* What "Ger" means does not appear, unless it has reference to a statement made below in the same paper: "Country of origin Germany."

The record further discloses that the merchandise was duly examined and reported on by the Examiner (p. 15): that the examination and classification of it as "wool waste" were verified and the entry returned to the Appraiser of the Port by the Acting Assistant Appraiser of the First Division; that the return was verified and approved by the Assistant Appraiser of the Port; that thereafter on the 22nd of August, 1910, it was checked and found correct as to classification, value and weight by the Chief of the Liquidation Division (R., p. 17); that duty was assessed at the rate of 10 per centum ad valorem under paragraph 135 (*a*) of the tariff act above referred to, in which paragraph "wool, not otherwise provided for, (*a*) combed, prepared for yarns, wool waste" is specified, and that, on the 23d of August, the duty so assessed ($166.89) was paid. (See Examination and Liquidation Return, R., p. 15). Including the other ten cases, the amount paid was P.3,637.18, or $1,818.59 as the duty on a total of 94 bales.

On the 27th of August, 1910, within the limit of time, and in accordance with the procedure, prescribed in act No. 355 (as amended) of the Philippine Commission, Plaintiff in Error filed with the Secretary of the Board of Protests and Appeals a protest wherein he claimed that the merchandise in question ought to have been entered and liquidated under paragraph 311 of said tariff act, which places 'bristles, animal hair and wool, not further advanced in condition than washed," in the free list (R., p. 10). When subsequently the matter came before the Insular Collector of Customs on appeal from the action of the Collector of the Port of Manila in classifying the importation as wool

waste and exacting payment of the duty above mentioned, he sustained the protest and decided (on the 23d of June, 1911, R., p. 8) that—

> "The testimony taken at the hearing, and further investigation, shows that the article in question is commercially known as 'noils,' consisting of short hairs of wool and is what is left when the wool is being combed by a machine. The short hairs are not taken up by the machine and combed as are the long ones but leave the combing machine again in a mass which is neither combed nor waste. In combed wool the hairs are parallel, while the waste consists of refuse or broken particles thrown off in the process of manufacture. It is shown that 92 per cent of this article is again used for manufacturing purposes, and, therefore, may not be considered as waste.
>
> "This is neither wool advanced in value nor wool waste. The wool that has been extracted from this article here imported might be properly deemed as wool 'combed' under paragraph 135, but in my opinion this article may not properly be so classed, as no process has been applied to it which has advanced it in value or improved its condition. Protest No. 8062 is therefore for the foregoing reasons sustained. The entry in question will be reliquidated accordingly and the corresponding refund made."

In defining the further practice in such cases, the Philippines customs administrative act (No. 355, as amended by act No. 864, 3 Public laws, p. 3), provides, among other things, that if "the decision of the Insular Collector * * * shall be adverse to the Government on the matter at issue and the Secretary of Finance and Justice shall certify in writing that in his opinion such decision ought to be revised by the Court of Customs Appeals" (of the Philippines), "it shall be thereupon the duty of the Insular Collector to certify and transmit his decision, together with

the entry, invoice and exhibits and all other papers connected therewith, to the Clerk of the Court of Customs Appeals, and that court shall, upon notice to the Attorney General and to all parties interested, re-examine and determine the case as last above provided" (i. e., with reference to appeals by importers).

This, however, was amended by the act numbered 1405 (5 Public Laws, p. 75) which abolished the Court of Customs Appeals and substituted, as the appellate tribunal, the Court of First Instance of Manila.

In accordance with this practice, such a certificate was made in the case at bar by the Secretary of Finance and Justice on the 18th of July, 1911 (R., p. 7), the record was accordingly forwarded to the Court of First Instance of Manila (R., p. 5), and that court, on consideration of the matter, concluded that the merchandise should have been classified under neither of the paragraphs of the tariff act above quoted but under paragraph No. 303 (*b*), which provides for "materials, substances and articles not otherwise provided for, (*a*) not advanced in value or condition by any process of manufacture, ten per centum ad valorem, (*b*) further advanced but not manufactured into articles, fifteen per centum ad valorem." In arriving at this conclusion, the Judge stated (R., p. 3):

> "We are of the opinion that these 'noils' are properly classified under the paragraph 300-*b*" (mistake; should be 303-*b*, as appears farther on in the opinion) "of the Philippines customs law. The importer's letters of August 27, 1910, and May 4, 1911, show that the raw wool, after being washed, is separated by machinery, the long hairs being taken up by the machine and the short ones left in the form of the 'noils' in question. We are of the opinion that this mechanical separation is a 'process' within the meaning of

paragraph 303, and, being further advanced than washing, takes the article out of paragraph 311" (the paragraph in the free list). "An inspection of the samples, moreover, shows a marked difference between that labelled 'wool waste' (D) and those labelled 'noils.' The latter are much cleaner and of finer quality. (Samples A, B and C.) As to the purpose of the Philippines customs law of 1909, the primary and only specific one, as recited in its title, is 'to raise revenue,' which could hardly be promoted by resolving doubts in favor of the free list. The decision of the Collector is reversed without costs."

On the 21st of December, 1911, Plaintiff in Error filed a motion for a new trial on the grounds (*a*) "that the evidence adduced" did "not warrant the decision," and (*b*) that the decision was "against the law." This motion was overruled by the Judge of the Court of First Instance on the 11th of March, 1911 (R., pp. 3-5), and an exception was duly noted (R., p. 5), whereupon, on the 30th of April, 1912, as permitted by the said customs administrative act, a bill of exceptions was filed in the Supreme Court of the Philippine Islands (R., p. 37), briefs were presented by counsel for both parties and the case was submitted on the 21st of August, 1912 (*id.*). On the 20th of February, 1913, the judgment of the Court of First Instance was affirmed (*id.*).

The judgment of the Supreme Court of the Philippines, affirming that of the Court of First Instance and awarding costs to the Government, was entered on the 13th of March, 1913 (R., p. 39). On the 24th of March, 1913, Plaintiff in Error filed his petition praying that a writ of error be issued and that the case be sent to the Supreme Court of the United States (R., pp. 39, 40). Thereafter the customary bond was filed by Plaintiff in Error and citation duly

issued to the Insular Collector of Customs (R., pp. 41, 42).

With the petition for writ of error was filed the following:

ASSIGNMENT OF ERRORS.

"1. The Supreme Court of the Philippine Islands erred in affirming the judgment of the Court of First Instance of Manila and thereby, in effect, holding that the mechanical process of combing the long fibre out of ordinary washed wool, leaving the shorter fibres as a residue, known commercially as 'noils,' is a process which advances the short fibres in condition or value, contrary to the act of Congress of August 5th, 1909, entitled 'an act to raise revenue for the Philippine Islands and for other purposes' and contrary to paragraphs 303 and 311 of Section 8 of said act of Congress.

"2. The Supreme Court of the Philippine Islands erred in affirming the judgment of the Court of First Instance of Manila and thereby, in effect, holding that 'noils,' being the residue of short fibres of raw washed wool after the long fibres have been combed out, are dutiable under subparagraph (*b*) of paragraph 303 of Section 8 of the act of August 5th, 1909, entitled an act of Congress 'to raise revenue for the Philippine Islands and for other purposes,' contrary to the provisions of said act of Congress and contrary to paragraph 311 of Section 8 thereof."

ADDITIONAL ASSIGNMENTS.

3. That said Court erred in not having reversed the Court of First Instance, and in not having sustained the decision of the Insular Collector of Customs, on the ground that there was no evidence to warrant a decision of any other character.

4. Said court also erred in not holding that, in the circumstances presented by this case, the decision of the Insular Collector of Customs must be presumed to have been correct, and in not giving it the effect that ought to have been given it under the principle of law that applies in such cases.

5. Said court erred in affirming the holding of the Court of First Instance of Manila that "as to the purpose of the Philippine customs law, the primary and only specific one, as recited in its title, 'is to raise revenue,' which would hardly be promoted by resolving doubts in favor of the free list"; also in not having held instead that, in the circumstances presented by this case, any doubt that the Court of First Instance may have had as to the applicability of the provision in the free list referring to wool should have been resolved in favor of the importer.

(These additional assignments, it is respectfully submitted, are permissible for the reason stated in *Behn* v. *Campbell* (205 U. S., 402, 409), in which this Court said:

> "It is provided in the act giving this Court jurisdiction to review the judgments of the Supreme Court of the Philippine Islands that they may be reviewed here 'in the same manner, under the same regulations, and by the same procedure, so far as applicable, as the final judgments and decrees of the Circuit Courts of the United States.' In such cases alleged errors not stated in the assignment of errors filed with the petition for the writ have sometimes been considered. The limit of this practice is accurately stated in the 35th rule of this Court. There it is said that, if the errors are not assigned with the petition for the writ, they will be disregarded, except that the Court, in its option, may notice a plain error not thus assigned.")

ARGUMENT.

The Position of the Courts Below.

In the opinion announced by the Supreme Court of the Philippines the reasons why that court affirmed the decision of the Court of First Instance are not given. All that is said (following the statement of the case) is that—

> "After a careful examination of the record brought to this court, with special reference to the said assignments of error, we are persuaded, and so hold, that the classification of the merchandise in question made by the Court of First Instance is in accordance with the facts and the law applicable thereto, and, without a further discussion of the questions involved, and without prejudice to the writing of an opinion in which such questions may be more fully discussed, the judgment of the Court of First Instance is hereby affirmed with costs." (R., pp. 38, 39.)

The reasoning, however, on which Judge Lobingier of the Court of First Instance based his decision and which the Supreme Court of the Philippines appears to have adopted, was in part as stated above: that as the raw wool after having been washed, had been separated by machinery, it had been subjected to a "process" within the meaning of paragraph 303 of the Philippines tariff act and was, therefore, in a condition further advanced than washed—that, as a consequence, paragraph 311, which includes in the free list "bristles, animal hair and wool, not further advanced in condition than washed," could not properly be held to apply.

In the opinion accompanying his order overruling the motion for a new trial, Judge Lobingier further elucidates his viewpoint as follows:

"The word 'condition' is defined by Webster as 'mode or state of being; state of situation with regard to external circumstances or influences,' etc.; 'essential quality, property, attribute.' Nothing is said that would support the contention in counsel's brief that 'the word "condition" does not refer to the natural or inherent quality of the article or substance but to the condition of the substance separate and apart from its natural attributes' and 'as distinct from quality.' Wool in which long and short hairs are indiscriminately mixed can hardly be said to be in the same 'situation with reference to external circumstances' as that containing only one class or the other; and wool so separated would seem to be 'further advanced in condition than washed.'

As to paragraph 135 we have appellant's own statement in his protest that 'noils cannot possibly be defined as wool waste.' So that the only other paragraph under which to classify them would be 303. * * * To hold that other paragraphs of the tariff law 'cover all known conditions' of any commodity would be to assume omniscience in the lawmaker. It was because not all known conditions were believed to be covered by the others that paragraph 303 was inserted. We think it extremely doubtful, e. g., whether the legislators had in mind the particular separation process described in appellant's letters" (the protest, statement, etc). "It is rather an unusual one, not likely to be familiar to any but experts in a narrow line.

"If wool in the condition of short, segregated fibres is 'further advanced than washed,' is it also further advanced in value? On this point also we have appellant's declaration in his protest as follows: 'I used noils for the manufacture of felt hats because the short and thin hairs of the wool gave a lighter hat and finer felt than long-haired wool.' Clearly, then, they were more valuable for his needs than either the 'long-haired wool' or the mixed wool. In other words, they were 'further advanced in value' and it is applying rather than 'breaking the back' of the rule of assimilation to assess them at a higher duty.

"We think it also appears clearly enough from appellant's letters that the change by which these noils are advanced to the desired state or condition is a 'process' within the meaning of paragraph 303, and, in fact, a phase of combing or carding, for in his letter of October 24, 1910" (a protest in one of the cases consolidated with this, R., p. 22), "he described them as 'short wool which during the carding process of the wool has been rejected from the carding machine.' In other words, these noils are a by-product of wool, formed 'during the carding process,' just as vaseline is a by-product of petroleum, formed during the process of refining. It will not be questioned that vaseline is 'further advanced in condition' than crude petroleum and that the former's manufacture constitutes a process."

But this is not all. Another point was made in these opinions of Judge Lobingier which, it would seem, ought to be disposed of at the outset. We, therefore, defer what we shall have to say with reference to the above until after we shall have offered for the consideration of the court our views respecting the preliminary point just mentioned. The questions involved in it are presented by the situation set forth in the following:

It is stated in the opinion in which Judge Lobingier gave his reasons for reversing the Insular Collector of Customs (R., p. 2), and it is repeated in the bill of exceptions (R., p. 1), that the case was submitted by the parties to the Court of First Instance for decision on the documents in the record and that no testimony was produced on either side. Nevertheless, the Insular Collector, in his decision on appeal from the Collector of the Port, had referred to "testimony taken at the hearing" (R., p. 8) and to "further investigation" as having shown that the "article in question is commercially known as 'noils,' consisting of short

hairs of wool," and that these short hairs are "what is left when the wool is being combed by a machine." Counsel for Plaintiff in Error, Gsell, appears to have made objection to the effect that the testimony so referred to had not been sent up with the rest of the record in the case.

With reference to that contention Judge Logingier said in the opinion last above mentioned: "It is certainly the court's desire, as urged in appellee's brief, that 'for the purpose of deciding this case upon appeal, the court should be as informed about all the facts in the case as was and is the Collector'; but, as the Collector heard no testimony and neither party has seen fit to offer any here, * * * we see nothing to do but decide the question on the bare record"; and he further said that, "had the classification actually been based upon testimony, we should have been disposed to give it the same force as the finding of any other inferior tribunal."

He then explained that in an official letter, addressed by the Collector to the Solicitor General, "and by him made a part of the record equally with the decision," the Collector contradicted the statement in his decision and said: "No testimony was taken on the hearing of the case * * * The report and recommendations of the members of the Board of Protests and Appeals are never considered to be a part of the papers in a case of this nature, * * * are confidential * * * and * * * are not being furnished." (The elisions indicated by stars are the court's. What is omitted is not now ascertainable because the letter quoted from was not forwarded with the record filed in this court.)

In replying to the argument advanced as to this point by counsel for Plaintiff in Error, the Judge said in his opinion accompanying the order overruling the motion for a new trial (R., pp. 4, 5):

> "In his oral argument counsel complained because the court considered the appellee's" (Collector's) "official letter of December 1, 1911, as explaining his decision of June 23, but we do not see why one is not entitled to as much consideration as the other. The so-called 'decision' is not really a judicial one. It is nothing more than an administrative order, which has full effect so far as its directions are concerned, but it has no more weight as a judicial finding than any other official statement by the Collector. His declaration that 'no testimony was taken' was considered only in determining the force of counsel's argument that he must have had evidence before him which this court did not have and that on that account the order or decision should be affirmed."

The fallacy of this view will be shown hereinafter.

It thus appears from the record as sent up that by the invoice and his protest, by the description in the protest of the merchandise imported and the reasons set forth therein as to why it should have been admitted free of duty, also by the facts he alleged in a formal written statement filed with the Secretary of the Board of Protests and Appeals in support of his protest, also by the exhibits he presented of various classes of wool: washed, unwashed, waste and noils of several grades (R., p. 1), also by whatever else he may have brought before the Board of Protests and Appeals in the way of evidence (as indicated in the opinion of the Insular Collector), the Plaintiff in Error had at least, at the time the case was sent to the Court of First Instance, made out a *prima facie* case before the officers of the Customs Bureau.

It further appears that that showing was sufficient to induce the Insular Collector, on appeal from the decision of the Collector of the Port, to hold with the Plaintiff in Error that the merchandise in question was of a character that

brought it within the scope of paragraph 311 of the tariff act placing "wool not further advanced in condition than washed" on the free list; that the Government of the Philippines was, therefore, the defeated party; that it was at the instance, not of Plaintiff in Error, but of the Secretary of Finance and Justice that the case was taken to the Court of First Instance for review; that, although the Government was thus in the position of an appellant, its attorney, the Solicitor General, offered no evidence tending to show that the Insular Collector had erred in his decision but elected to submit the Government's case on the record as it stood.

POINT I.

The Proceeding Before the Court of First Instance was in the Nature of a Review on Appeal, not of an Action Originated by the Importer to Recover Duties Unlawfully Exacted. The Burden was, therefore, on the Government, as Appellant, to Show Affirmatively that the Merchandise in Question was not of a Character that Entitled it to Admission Free of Duty or Else that the Insular Collector's Interpretation or Construction of the Law was Clearly Erroneous. Any Doubt as to the Applicability to the Merchandise in Question of Either of the Above-Quoted Paragraphs Providing for a Duty Should Have Been Resolved in Favor of the Importer. In the Absence of Such Showing by the Government, the Insular Collector's Decision Should Have Been Presumed to be Correct and his Classification Sustained.

The provision of law under which the Insular Collector and the Court of First Instance of Manila obtained jurisdiction of customs disputes is contained in the act of February 6, 1902, of the Philippine Commission, known as the customs administrative act, No. 355 (2 Public Laws, p. 265), as amended first by Act No. 864, of the Philippine Commission, of September 2, 1903 (3 Id., p. 3), and subsequently by Act. No. 1405, of the same body, dated October 13, 1905 (5 Id., p. 75).

In addition to his purely administrative duties, Section 23 of the Act of 1902 (No. 355) confers on the Insular Collector a certain quasi-judicial function. It provides that "questions arising at any port shall be referred by the collector thereof to the Insular Collector for his decision." Section 286 provides that in cases in

which any owner, importer, consignee, etc., is dissatisfied with the decision of a collector, he shall file a notice of such dissatisfaction, etc., "which notice, together with the entry, invoice and all other papers and exhibits connected therewith, shall be forthwith transmitted to the Insular Collector, who shall examine and decide the case thus submitted." Section 287 provides that—

> "If the decision of the Insular Collector * * * shall be adverse to the claim of the owner, importer, consignee or agent of the merchandise, or to the person paying to the collector of customs fees, charges and exactions other than duties, the owner, importer, consignee or agent, or the person paying the fees, charges and exactions, may within five days, exclusive of Sundays and holidays, after notice to him in writing by the collector of customs of such adverse decision, appeal therefrom to the Court of Customs Appeals by giving notice in writing to the collector of customs of his dissatisfaction with such decision, which notice shall be forthwith transmitted by the collector of customs to the Insular Collector, who shall thereupon forthwith certify and transmit to the Clerk of the Court of Customs Appeals such notice of appeal, together with the entry, invoices and exhibits and all other papers connected therewith, and his decision thereon, and the court shall proceed, upon notice to the appealing party and to the Attorney General, to examine the case submitted, and the decision shall be final except in cases which are certified to the Supreme Court of the Islands."

The practice in the event that the decision of the Insular Collector should be adverse to the Government is stated in the quotation from this act already set forth in this brief in the statement on pages 4 and 5, *supra*. As also already stated, the Court of Customs Appeals was abolished by the

act of 1905 (No. 1405), and its jurisdiction and its "duties and powers" transferred to the Court of First Instance of Manila. As amended by this act of 1905, Section 288 of the administrative act read at the time this case was taken to the Court of First Instance:

> "The evidence taken before either the Collector of Customs or the Collector of Customs for the Philippine Islands" (the Insular Collector) "may, if competent, be used before said Court of First Instance for the City of Manila and said court may receive further evidence pertinent to the issue, make general rules governing the proceedings before it, allow costs to the Government or the adverse party. * * * The remedy by appeal to the Court of First Instance for the City of Manila is exclusive upon all questions relating to the customs duties or the administration thereof under this act. No right of action shall exist on the part of the owner, importer, exporter or consignee to recover back any duties, fees or exactions by him or them paid except by means of appeal in accordance with the provisions of said Section 287 as amended. In case any appeal is carried to the Supreme Court of the Islands upon exceptions, that court shall thereupon proceed to examine the case and render such judgment and issue such orders as it renders and issues in other cases pending in the Courts of First Instance. The decisions of the Court of First Instance for the City of Manila not carried to the Supreme Court upon bills of exception shall be final and binding, as likewise shall be the decisions of the Supreme Court upon such appeals carried to it by virtue of the provisions of this act."

In view of these provisions, there would seem to be no question but that, unlike the practice prescribed by statute in the United States with reference to the bringing of suits in the Circuit Courts in customs cases, the proceeding in

the Court of First Instance in the case at bar was in the nature of an appeal. No complaint, petition, or any other sort of pleading was filed by either party. No trial was had such as is ordinarily had in courts of first instance, either in the Philippines or here, in cases originating therein. The case was probably argued, but, except for that was simply "submitted for decision by the parties upon the said documents" (R., p. 1).

In these circumstances there was every reason why the finding and decision of the Insular Collector should not have been disturbed in the absence of an affirmative showing by the Government of the character above indicated. It is respectfully submitted that no case could be presented to which the principle of law that an administrative officer, acting in the discharge of his duty, in a matter within his jurisdiction, should be presumed to have acted rightly could more appropriately apply. As said by this court in a customs case that occurred in this country (*Arthur* v. *Unkart*, 96 U. S., 118, 121-2)—

> "When an appeal is taken from his decision, the decision of the collector ceases to be conclusive, and the same is true of the decision of the Secretary of the Treasury. These officers are, however, selected by law for the express purpose of deciding these questions. They are appointed and required to pronounce judgment in each case; and the conduct, management and operation of the revenue system seem to require that their decisions should carry with them the presumption of correctness. The rule is not only wise and prudent, but it is according to the general principle of law: that an officer acting in the discharge of his duty, upon the subject over which jurisdiction is given him, is presumed to have acted rightly. * * * The burden of proof is on the party holding the affirmative of the issue."

And in another customs case (*Erhardt* v. *Schroeder,* 155 U. S., 124, 129-130) this court said that—

> "The protection of the convenience only of the taxpayer is not of such vital nature as to authorize a court to treat a statute, primarily directed to public officers for their guidance and the substantial protection of the Government, as mandatory, and to consider functional acts not in strict conformity with the statute as void. The protection must be substantial and must be intended as a guard of rights of property. Cooley on Taxation, 215, 216. In this view, it is apparent that the usual presumption of a legal collection is not changed by the circumstances of this case and that the burden is upon the importer of overcoming this presumption by proof that the exaction of the duties was unlawful."

In the case at bar the shoe is on the other foot, but the principle just stated, it is assumed, applies equally to a case wherein the Government of the Philippines is appellant as to a case wherein the appeal is by the importer.

But, as already pointed out, Judge Lobingier, in the Court of First Instance, though recognizing this principle, attempted to evade its effect by holding, as matter of fact, that it did not apply because no testimony was taken in the proceeding before the Insular Collector of Customs—this notwithstanding the statement in the latter's formal decision that the contrary was true. "Had the classification actually been based upon testimony," Judge Lobingier said in his opinion (R., p. 2), "we should have been disposed to give it the same force as the finding of any other inferior tribunal." And all he had on which to base this holding of his that no testimony was taken by the Insular Collector was a statement made by that officer in a letter—a mere *letter,* not a formal certificate, or supplementary transcript

of record, or anything like that—and addressed by him, not to the court, but to the Solicitor General on the 1st of December, 1911, about six months after the date of the decision itself (R., p. 4, fol. 8).

Judge Lobingier did differ with him as to the applicability of the provision in the free list, that is true, but, aside from that, it was on this alone that he attempted to impeach the soundness, or legitimacy, of a decision made by an officer whose duty it was to make it, who, in all probability, had expert knowledge of the subject and plenty of evidence, if not testimony, respecting the exact character of the importation, and whose classification was made conclusive by law, except in the event of appeal—a decision to which the law attached a presumption of correctness in *any* event, unless, of course, that presumption should be overcome by proof that the classification was wrongly made or else negatived by a clear showing that the interpretation or construction of the law on which it was based was erroneous.

For this court has held that where there is doubt as to which of two or more provisions of a tariff act apply—and we think it will be clear from what follows in this brief that there could not reasonably be even doubt as to the inclusion of noils in the free list—that doubt must be "resolved in favor of the importer, since the intention of Congress to impose a higher duty should be expressed in clear and unambiguous language" (*American Net and Twine Company* v. *Worthington,* 141 U. S., 468, 474), or, as it was put in another case (*Hartranft* v. *Wiegman,* 121 U. S., 609), "duties are never imposed on the citizen upon vague or doubtful interpretations." The court cited in these cases *United States* v. *Isham* (17 Wall., 496); *Garr* v. *Scudd* (11 Exch., 190), and *Powers* v. *Barney* (5 Blatchford, 202). Federal courts also followed this rule in *McCoy* v.

Hedden (38 Fed., Rep., 89); *Rice* v. *United States* (53 Fed. Rep., 910), and *Matheson* v. *United States* (71 Fed. Rep., 394).

And this holding of his Judge Lobingier attempted to justify on the theory that the decision of the Collector was not a "*judicial*" one anyway, that it was "nothing more than an administrative order" (R., p. 5). How he reconciled this with his declaration, in the other opinion, that "had the classification actually been based on testimony," he would "have been disposed to give it the same force as the finding of any *other* judicial tribunal," he did not explain.

We do not regard it as appropriate in this connection, however, to do more than merely suggest to this court the utter incompetence of the letter referred to as evidence of any of the statements it may contain, its immateriality in view of the fact that the correctness of the Insular Collector's conclusion was not necessarily dependent on oral testimony as to the facts he found, and the invalidity of any such method as was resorted to by the Solicitor General of the Philippines of attacking the legitimacy or soundness of a decision made by an officer of the government in the performance of his duty and in a matter within his jurisdiction—and particularly when neither the validity of the decision itself nor the good faith of the Insular Collector or of any of the parties concerned was even brought in question.

As it seems to us, it was clearly error on the part of the Supreme Court of the Islands not to have reversed the Court of First Instance and sustained the decision of the Insular Collector on this ground alone.

And, apart from this, even assuming the statement made in that part of the letter which is quoted by Judge Lobingier (R., p. 2) to be true and to have been properly proven, it could not, it is respectfully submitted, be held to affect

the presumption as to the correctness of the Insular Collector's decision. The statement is too indefinite. "No testimony was taken at the hearing of this case," Judge Lobingier quotes the Insular Collector as having written—though just what was written, or, rather, all that was written, does not appear in the record here because the letter was not included in the transcript sent up by the Clerk of the Supreme Court of the Philippines. "The report and recommendations of the Board of Protests and Appeals," the quotation continues, "are never considered a part of the papers in a case of this nature * * * are confidential * * * and * * * are not being furnished."

What hearing was it at which no testimony was taken? Was it the hearing by the Collector of the Port or the one by the Insular Collector? Or was it one that occurred in connection with the "further investigation" to which the Insular Collector referred in his decision (R., p. 8), or a hearing by the Board of Protests and Appeals to enable that body to prepare its report and recommendations? On this the letter throws no light. For all that appears to the contrary, testimony may have been introduced at the hearing by the Collector of the Port (who in this case was the Insular Collector himself, acting in the capacity of Collector of the Port, R., p. 38); it may not have been taken down in shorthand and transcribed, and may not, therefore, have been included in the record sent to the court, or it may have been taken at a hearing by the Board of Protests and Appeals and not made a part of the record because of the confidential nature of its report. In either of these events the Insular Collector would have had the benefit of it, though it may be true that no testimony was taken at the particular hearing he granted on appeal.

Indeed, such would appear to have been the case when the statement that there was no testimony at the hearing is

considered in the connection in which the Insular Collector mentions that report and recommendation of the board in his letter. Besides, if as appears from that statement, the Insular Collector had the benefit of the report and recommendation of such a board to aid him in arriving at his conclusion, that would seem to constitute only another reason why his decision should have been presumed to be correct; and it must have been the intention of the Philippine Commission in enacting the administrative law that it should be so presumed, since it created a board of that character to assist him by laying before him the result of its consideration of these matters, and made his decision final except in the event of appeal.

A still further reason why the letter should have been ignored we think it proper here to quote from the brief of counsel who represented Plaintiff in Error in the Supreme Court below, the letter not having been forwarded to this court with the other papers of record in the case. Counsel said in the brief:

> "We ask that the Supreme Court exclude from consideration the letter of the Colletcor of Customs of December 1st, 1911, addressed to the Solicitor General. The Court of First Instance in its decision states that the Solicitor General made the letter a part of the record equally with the decision of the Collector. How can that letter be made a part of the record? It was not certified up from the Custom House. No testimony was taken in the Court of First Instance. The fact is the Solicitor General sent it to the Judge with his reply argument. Records are not made in that way. *The letter flatly contradicts the Collector's official decision. The decision was made when the Collector had everything fresh in mind. By what legal principle can a letter written more than six months after be considered of equal value?* We consider that it was the plain duty of the Court of First Instance not to receive the letter."

The Supreme Court below evidently did not exclude it from consideration nevertheless, for in its opinion it says (Rec., p. 38), that "after a careful examination of the record brought to this court * * * we are persuaded, and so hold, that the classification of the merchandise in question made by the Court of First Instance is in accordance with the facts and the law applicable thereto."

And this brings us to another misconception—perhaps only inadvertence—of the Court of First Instance which, it occurs to us, may possibly have led to some confusion in the minds of the Justices of the Supreme Court below unless they as carefully examined the provisions of the customs administrative act (above quoted) as they did the papers in the record. All through Judge Lobingier's two opinions (the one reversing the Insular Collector and that denying the motion for a new trial) he designated Gsell, the plaintiff in error here, either as the "importer" merely or as "appellant," when in fact he was appellee. Only once did he refer to him as appellee—this at the point in the former opinion (R., p. 2, fol. 3) at which he mentions his brief. If the Supreme Court below was led by this use of a misnomer into the mistake of regarding the burden of proof as having been on Gsell instead of the Government, it may be that this had some influence on the upper court with respect to its failure to sustain the Insular Collector and set the holding of Judge Lobingier aside.

It appears also that, in the preparation of the record in the office of the Clerk of the Supreme Court below, still another inadvertence occurred, of the kind that apparently occurred in connection with the letter of the Insular Collector to the Solicitor General. As stated above, the Government produced no evidence whatever in the Court of First Instance, unless that letter can be considered as such; but "when it was found that no evidence had been taken

before the Collector" (this is quoted from the opinion of Judge Lobingier, R., p. 5), "opportunity was given to the appellant" (obviously meaning Gsell) "to produce further evidence, and this leave was availed of by producing only appellant's affidavit." Like the letter, this affidavit, though considered below, was omitted from the transcript sent to this court by the clerk of the Supreme Court of the Philippines.

It is, however, now on file herein, as appears from a communication received by counsel from the clerk of this court, of which the following is a copy:

"March 30, 1914.

HARRY W. VAN DYKE, ESQ.,
Washington, D. C.

DEAR SIR:

I am today in receipt from the Clerk of the Supreme Court of the Philippine Islands a copy of an affidavit which he states is required to complete the transcript of record in the case of Carlos Gsell vs. The Insular Collector of Customs, No. 801, October Term, 1913, and beg to advise you that nothing can be added to a record after it has been filed in this Ct. except by a stipulation of counsel or writ of certiorari under the 14th rule.

Yours truly,

JAMES D. MAHER,
Clerk Supreme Court, U. S.
Per W. R. S., Ass't."

In accordance with this suggestion, an effort was made by counsel for Plaintiff in Error to get counsel for the Insular Collector to stipulate that the paper might be printed as part of the record in this court, but without success; and, as a duly authenticated copy had already been sent up by the clerk of the court below and was already on file, counsel

for Plaintiff in Error made no application for a writ of certiorari, for, under his interpretation of the fourteenth rule, it did not seem necessary to put the plaintiff in error to the additional expense incident thereto. Since, therefore, the affidavit was omitted from the copy of the record printed for the use of the court, we print a copy as an appendix to this brief in the hope that it will be read and considered with the other documents sent up by the clerk of the court below.

From it the court will see that "at the hearing in the Custom House in this proceeding," affiant and another witness "were present and made oral statements, which were received, as affiant believed at the time, as evidence in the case."

POINT II.

The Interpretation Below of the Duty-Imposing Provision of Section 303 of the Philippines Tariff Act was Erroneous, in that it was in Disregard of Certain Principles of Law that this Court has Held Applicable to the Interpretation of Statutes of that Character. The Purpose of Congress in Placing Raw Wool in the Free List Should Have Been Considered, Also the Object of the Process From Which Noils Resulted. There was no Evidence, Competent or Otherwise, on Which to Base the Conclusions as to Increase in Value and Improvement in Condition. The Merchandise Should have been Held to Be Admissible Free of Duty Under Section 311, Placing in the Free List Wool Not Further Advanced in Condition than Washed.

Apart from the exhibits, all that the record that was before the Court of First Instance and the Supreme Court of the Islands in this case contained in the way of means of enlightenment on this subject was that which appears in the papers filed by the Plaintiff in Error, Gsell, and the official documents sent up from the office of the Insular Collector of Customs in compliance with the order of the Secretary of Finance and Justice.

The invoice showed that the thing imported was "wool" —752 kilos of it "B. Ayres Supra" and 1514 kilos "Australian." The evidence showed that this was of the character commercially known as "noils." This fact the government is not recorded as having even disputed either in the Court of First Instance or on appeal to the Supreme Court of the Islands. The examination and liquidation return, however (R., p. 15), shows that the goods were origi-

nally classified by the subordinate customs officers as "wool waste" and that the paper wherein it is so entered was signed by one J. Carlos, as agent of the Plaintiff in Error, Gsell.

The explanation of this apparent "declaration against interest," as Judge Lobingier calls it in one of his opinions (R., p. 2), is found in the fact that the customs administrative act (Section 167) requires the importer to make a declaration containing, among other particulars, "a just and true account, classification and description of the goods," and, in another section (311 as amended), provides that if the importer shall make a classification of the merchandise at a lower rate than would be collectible under the law, he shall be subject to fine, etc. Of course, therefore, not knowing whether the protest he contemplated making would be sustained, he classified the goods in his declaration as he had ascertained they would be classified by the appraisers. Of this he says in his affidavit (*infra*), "he still declares noils as wool waste and thereupon presents his protest, believing and understanding that that is the course necessary for him to pursue to avoid fines."

It is evident that neither the Court of First Instance nor the Supreme Court of the Islands regarded itself as precluded by this declaration from agreeing with Plaintiff in Error and the Insular Collector that the merchandise in question is not wool waste, however, for the Court of First Instance said, and the Supreme Court concurred, that "while this admission by the importer would seem to justify us in classifying these noils as wool waste, we are convinced, after scrutinizing the record, that this would not be a proper classification" (R., p. 2). And this court has held in a number of cases, in effect, that the dutiable character of an article imported must be ascertained, not by the declaration of the importer, but by an examination of the article

itself, in the condition in which it is imported and irrespective of its descripton in the importer's declaration.

In the case of *Worthington* v. *Robbins* (139 U. S. 337, 341), for example, wherein the article imported was known to the trade as "white hard enamel," used as facing for various instruments, including watches, thermometer scale columns, steam cock dials, etc., this court said:

> "In order to produce uniformity in the imposition of duties, the dutiable classification of articles imported must be ascertained by an examination of the imported article itself, in the condition in which it is imported. In order to be dutiable as 'watch materials' the article when imported must be in such form of manufacture as to show its adaptation to the making of watches. The article in question was to all intents and purposes raw material. * * * The fact that the article in question was used in the manufacture of watches has no relation to the condition of the article as imported or to what afterwards the importer did with it." Citing, *Dwight* v. *Merritt,* 140 U. S. 213, 219; *United States* v. *Schoverling,* 146 U. S. 76, 82. See also *Cadwalader* v. *Jessup &c Paper Co.,* 149 U. S. 350, 354; *Sonn* v. *Magone,* 159 U. S. 417, 421; *Magone* v. *Wiederer,* 159 U. S. 555, 561; *Tide Water Oil Co.* v. *United States,* 171 U. S. 210, 218.

But in his protest dated the 27th of August, 1910 (the one in the test case at bar), Plaintiff in Error here, not only described the character of the merchandise imported and the use to which it was intended to be put, but made his position respecting his declaration of it as wool waste perfectly clear. "I am of the opinion," he said, "that this article is entitled to pass under the 'free list' (tariff section 311), being not 'further advanced in condition than washed,' having not passed any combing or carding process." Then, continuing—

"Every original lot of wool directly deriving (derived) from the sheep consists partly of long and comparatively coarse fibres and partly of short and supple ones. The first mentioned long and coarse fibres are the proper material fit for the manufacture of woolen textiles, whilst the short and soft fibres are useless for this purpose, but are especially employed in the manufacture of felt hats and other industries. In order to separate these two classes of fibres of quite different qualities, the original wool has to pass, of course, some machinery. My felt hat factory consumes this material for the purpose of obtaining a mild and soft hat, but it is able to work up at any time the original material as produced directly from the sheep, if it attaches less value to these qualities of the finished felt. The wastes mentioned in paragraph 135-a, resulting from the combing or carding machines used in the manufacture of woolen textiles, consists of broken fibres unfit for the manufacture of felt hats."

Now, what of the holding of the court below that the importation in question is comprehended within the terms of Section 303 (*b*) of the tariff act above referred to and that it should have been classified thereunder? Section 303 is the *residuary* provision which was inserted at the end of all the duty-imposing sections of the act and just preceding the free list. It reads: "Materials, substances and articles *not otherwise provided for*—(*a*) not advanced in value or condition by *any* process or manufacture, ten per centum ad valorem; (*b*) *further advanced* but not manufactured into articles, fifteen per centum ad valorem; (*c*) *manufactured into articles,* twenty-five per centum ad valorem."

The meaning and intention of this seem plain enough. The paragraph was designed, of course, to cover every character of importation that could not by any reasonable interpretation be regarded as embraced in one or the other of the duty-imposing provisions of the act or in some pro-

vision of the free list. For where there is a question whether an importation is comprehended by one of two or more paragraphs of a tariff act, the rule is that the question is to be determined, if possible, by the test of *definiteness of application*—that is, by ascertaining, if this can be done, whether one of the provisions is more nearly definite in its application to the thing in question than the other or others. This, in substance, was held by this court in *Isaacs* v. *Jones* (148 U. S. 648); *Bogle* v. *Magone* (152 U. S. 623), and *Fink* v. *United States* (170 U. S. 584). Therefore, if wool in the condition known as noils could by reasonable interpretation of any paragraph specifically providing for wool, be regarded as embraced therein, that, we think, is the interpretation that should have been placed on the act in question.

Wool, in the form of noils is otherwise provided for—and *definitely*, it is respectfully submitted. Wool is provided for in all its stages of development, from the crude raw product of the sheep's back to its manufacture into articles. In Section 311 of the act it is provided, in effect, that it shall be admitted free if still in a raw state, that is, not "further advanced in condition than washed." In subdivision (*a*) of Section 135 it is made dutiable when "combed, prepared for yarns," or when of the character known as "wool waste." In subdivision (*b*) it is subjected to a higher duty when "combed and carded or dyed." In Section 136 the duty is increased on it if made up into "yarns." In section 139 "knitted goods" of all kinds are provided for, in the piece, when made up into underwear and in all other forms. In Section 140 all sorts of "textiles, in the piece" are comprehended, and, in Section 141, all other "manufactures of wool."

The point of difficulty with Judge Lobingier of the Court of First Instance was that there seemed to him to be a pro-

cess *between washing and carding* by which the wool was advanced in condition and that Congress, through lack of adequate information, had failed to make any provision for it in that intermediate stage. He was convinced, therefore, that the only thing that could be done was to classify it under the general residuary paragraph above quoted. "Wool in which long and short fibres are indiscriminately mixed," he argued, "can hardly be said to be in the same 'situation with regard to external circumstances' as that containing only one class or the other, and wool so separated would seem to be 'further advanced in condition than washed.' * * * We think it extremely doubtful, e.g., whether the legislators had in mind the particular separation process described in appellant's" (meaning Gsell's) "letters. It is rather an unusual one, not likely to be familiar to any but experts in a narrow line."

Aside from the fact that Congress cannot, of course, be presumed to have legislated in ignorance of the subject-matter of its enactment, a glance at the famous Schedule K of the tariff act approved the same day as the Philippines act, entitled an "an act to provide revenue, equalize duties and encourage the industries of the United States, and for other purposes"—and which we regard as an act *in pari materia* with the Philippines act—would have persuaded the court below, we have no doubt, that such a presumption would be rather absurd.

The comprehensiveness of the schedule, the knowledge displayed in the great mass of detail into which it goes, would probably have suggested that it was more than likely that at least the members of the Ways and Means Committee of the House of Representatives and the Finance Committee of the Senate, who had had the provisions of the act under special consideration for many weeks, knew about as much about how many kinds of processes it was the general

practice to put so important an article of commerce as wool through in the course of its preparation and manufacture, also, perhaps as much about even the cost of those processes, as any business man in the country. The importunities of producers and manufacturers, to say nothing of importers, must have insured that; and, besides, it was the duty of the legislators to find out about such things, and to consider every detail, not only from a revenue-producing viewpoint, but on higher grounds of political economy.

It is a fact of which this court will take judicial notice, we assume, that the exigencies of commerce and the manufacturing industries in the Philippines were not then, any more than they are now, the same as those that Congress must have had in contemplation in passing the tariff act of that same year for the United States proper. The court will take judicial notice, too, we suppose, of the fact that there are industries of many more kinds here than in the Philippines—that the chief industries here are divided into separate, and, in a measure, independent branches, such as sheep-raising and shearing, for instance, in the wool industry, scouring, sorting and preparing the raw wool for market, spinning it into yarns, weaving it into cloth, felting, etc.; and it is obvious, we think, that in going into detail in the wool schedule of the act for the United States, it was the intention of Congress, simply because of this state of specialization in the various principal branches, to adjust the duties with reference to the exigencies of each particular branch independently of the others—so far as this could be done, of course, consistently with the interests of the public and the wool industry as a whole, as Congress conceived those interests to be.

In view of the very different conditions that existed in the Philippines, it is reasonable to conclude that the exigencies of commerce and the industries there could not possibly have been the same. When, therefore, Congress pro-

vided for the Islands this apparently complete schedule in the Philippines act, beginning with the crude, raw material and, in terms, dealing with everything from waste to all sorts of manufactures of wool—in other words, when Congress enacted this schedule, dealing specifically with wool not further advanced in condition than washed, and, in addition, prescribed duties on wool in all its principal stages of development and manufacture, it is not to be presumed, as it appears to us, that because the lawmakers did not go into any very great amount of detail in that schedule and framed the provisions in more general terms than in the act for the United States, they intentionally or through ignorance left between washed wool and carded wool a gap to be filled in by the courts by construing some other section to apply, wherein wool is not even mentioned.

It is clear, as we think, that, on the contrary, the intention is manifest to make this schedule complete in itself, that it was not the purpose that any such hiatus should be left. For instance, in Section 372 of the act of the same year applying to the United States "top waste, slubbing waste, roving waste, ring waste and garnetted waste," are specifically provided for, and, in Section 373, "yarn waste, thread waste and all other wastes composed wholly or in part of wool." Could it properly be held that because Section 135 of the Philippines act mentions only "wool waste" generally, there is a gap between that provision and the next for the reason that the wastes comprehended by the general term "wool waste" are the ordinary kinds mentioned in Section 372 of the act applying to the United States and that yarn waste and thread waste, therefore, are not provided for in the wool schedule of the Philippines act and must be assessed under the residuary paragraph at the end of the act?

Again. For purposes of interpretation, this act of 1909, applying to the United States also provides (Section 367)

that "unwashed wools shall be considered such as shall have been shorn from the sheep without any cleansing"; that "washed wools shall be considered such as have been washed with water only on the sheep's back or on the skin"; that wools (of certain kinds) that shall have been "washed in any other manner than on the sheep's back or on the skin shall be considered as *scoured* wool." Could it properly be held that, because Section 311 of the Philippines act makes no mention of "scoured" wool, a gap is left between the "washed" wool, referred to in that section and the combed wool provided for in the next higher class?

Certainly not. It is clear that in employing the expression (in Section 311), "not further *advanced in condition* than washed," Congress used the word "washed," not in a technical sense, but in the sense in which it is ordinarily understood, for scouring is washing, nothing more—only, regarded as a step in the process of cleansing, it may be more thorough—and it is clear that Congress could not have considered it as a process inherently different in itself, since the provision reads that wool '*washed* in any different manner than on the sheep's back shall be considered as scoured." This view is further enforced by the fact that in this Schedule K of the United States act of 1909 raw wool is divided into three general classes and it is only with reference to "wools of the first and second classes" that such distinction is made. Those of the third class, washed in any other manner than on the sheep's back are not subjected, on that account, to any higher duty.

A similar question came to this court in the case of *Patton* v. *United States* (159 U. S. 500), in which the suit was to recover duties on 33 bales of merchandise entered by the importer as wool waste and claimed to be dutiable at 10 cents a pound under Schedule K of the tariff act of 1883. This imposed a duty at that rate on "woolen rags, shoddy, mungo, waste," etc. The appraiser returned the goods as

provided for in a clause reading, "scoured wool, broken tops, Class I, costing under 30 cents per pound in the unwashed condition, 60 cents per pound." The court said:

> "The remaining assignment of error is to the charge of the court that if the wool was imported scoured and in a condition other than that in which such wool was customarily imported in March, 1883, and previously, it fell within the provision of wool imported scoured. There is abundance of testimony to the effect that the article imported was not known commercially as scoured wool, but, in the view taken by the court below, this was immaterial. *The act does not impose a duty on scoured wool as such by its commercial designation,* but provides that 'the duty on wools * * * which shall be imported washed shall be twice the amount of duty to which they would be subject if imported unwashed, and the duty on wools of all classes which shall be imported scoured shall be three times the duty to which they would be subject if imported unwashed.' *In short, the act refers, not to the commercial designation but to the fact whether the wool has been actually scoured or washed, or is imported unwashed.* If the wools have in fact undergone the process of scouring, they are properly classified as imported scoured, although they may not be known commercially as scoured wools."

So in the case at bar. Section 311 of this tariff act applying to the Philipppines does not provide for the free admission of washed wool as so designated commercially, but refers to the fact as to whether *actually* the condition of the wool has been advanced beyond that which would result from washing—and by washing in *any* manner, since the term used is the broadest and makes no attempt to distinguish among the various kinds of washing, or as to whether or not the wool shall have been even so much as washed. If "not further advanced in condition *than* washed," it is to be

admitted free. However, there was not a scrap of evidence tending to show that the wool in question—or noils, rather —had been further advanced in condition by reason of its having been scoured. This aspect of the matter is only mentioned here in illustration of the point that there was no purpose on the part of Congress to leave gaps to be filled in by construction and that Congress could not, through ignorance, have omitted anything in the schedule that it intended should be embraced.

It is respectfully submitted, therefore, that since, in view of the provisions of this wool schedule and of the free list, it was the obvious purpose of Congress to cover *the whole subject* of wool, as well in its raw and manufactured states as in its preparation for manufacture, the intention that noils should be embraced within some one or other of those provisions is self-evident. It is further submitted that it was not the intention that wool, in the condition known commercially as noils, should be dutiable, but that all raw wool (except "wool waste") not advanced to the condition of having been "combed" or "prepared for yarns" —for these constitute the first dutiable class—should be omitted free. (Wool waste is made dutiable in terms, and for a reason, as we shall show hereinafter, that could not possibly apply to noils.)

As appears from the record, all the evidence that the Court of First Instance had on which to base its holding that the mechanical separation of the long from the short hairs, or noils, was a process that advanced the wool to a condition further than washed, were the statements made by the Plaintiff in Error, Gsell, himself, in the papers he filed in the Custom House (R., p. 1, and see opinion of court, p. 3) and in the affidavit he subsequently filed by leave of that court. It is true that in his protest of August 27, 1910 (R., p. 10), Gsell did say that *"in order to sepa-*

rate these two classes of fibres of quite different qualities" (the long and short), "the original wool, of course, has to pass some machinery"; but he explained in the statement he submitted to the Board of Protests and Appeals (R., pp. 9-10), and this before the case reached the Insular Collector much less the Court of First Instance, that—

> "When wool is being combed by machine, the short hairs are not gripped by the tools while the long ones are being gripped and combed. *The short hairs leave the combing machine again in the same state as they have been put into same. They are not parallel, and, therefore, not combed.* * * * The present style demands long-haired cloth, which accounts for the fact that most European combing machines are regulated so that noils of a comparatively great length result. When short-haired cloth is in style, a much greater quantity of combed wool results out of the same quantity of raw material, giving less noils. * * * As above stated, the samples of the different noils imported by me show that the individual hairs of same are not parallel, which would be the case if they were combed, *this being the purpose of the combing.*"

Speaking of the effect of the *purpose* of a process in determining the proper classification of a material under a revenue act, as a result of which process the material is obtained, this court said in the case of *Seeberger* v. *Castro* (153 U. S. 32, 35):

> "The court below found in this case that the scraps were 'clippings from the ends of cigars and pieces broken from the tobacco of which cigars are manufactured, in the process of such manufacture; that such clippings and pieces broken from the tobacco of which cigars are manufactured are not fit for any use in the condition in which the same are imported, and that

their only use is to be manufactured into cigarettes and smoking tobacco.' It is thus evident that the clippings are the mere waste resulting from a process of manufacture and not in themselves manufactured articles. * * * It seems to us, that both the meaning of the word 'manufacture' and the analogy of the internal revenue provisions require us to hold that these scraps are not manufactured tobacco.

"In *Lawrence* v. *Allen, 7* How. 785, 794, the process of manufacture was defined to be 'making an article, either by hand or machinery, into a new form, capable of being used, and designed to be used, in ordinary life.' A like view of what constitutes an article of manufacture had been previously announced by the Court of Kings Bench: 'The word "manufacture" has been generally understood to denote a thing made which is useful for its own sake and vendable.' etc. *Rex* v. *Wheeler,* 2 B. & Ald. 349. In *Holden* v. *Clancy,* 58 Barb. 590, the test of whether an article is manufactured is thus defined: 'A manufacture is defined as the process of making anything by art or of reducing materials into a form fit for use, by hand or by machinery, *and it seems to imply a proceeding wherein the object or intention of the process is to produce the article in question.*'

"*The residuum, or refuse, of various kinds of manufacture is more or less valuable for certain purposes and may be, and is, often the subject of sale; but it is not expected that the skill and attention of the manufacturer is to be devoted to the quality of the refuse material. That is not the object of the process and its quality is wholly subordinate and disregarded when attention to it would interfere with the most profitable mode or material to be used in the process which is the main object of the manufacture.* Tested by either of these definitions, the tobacco in question is unmanufactured. We think that the context of these sections makes it clear that their general purpose and object are to regulate the manufacture and disposition of all classes of tobacco and that they conform, by a fair

construction and interpretation, to the view that the scraps are neither a manufactured nor a partially manufactured article."

From what Plaintiff in Error said in the statement above quoted, it is clear that "combing" is a step in the preparation of the wool for manufacture. This is manifest, too, from the grouping of the items in Section 135, of the tariff act itself—the section in the wool schedule that contains the first duty-imposing provisions. Wool "(*a*) combed, prepared for yarns," it reads, and "wool waste, ten per centum ad valorem; (*b*) combed, and carded or dyed, fifteen per centum ad valorem." Then it goes on to provide for yarns, knitted goods, textiles and other manufactures of wool. There being not one word of evidence to the contrary of this, how, then, could it properly have been held that this combing of the long hairs out of a mass of mixed long and short hairs advanced the *short* hairs to a condition further than washed? The short hairs are not combed.

Also, it is clear that as Plaintiff in Error stated in the paper he filed with the Board of Protests and Appeals, the *purpose of the combing is not to produce noils,* but to arrange the long fibres in parallel position and take from the mass of mixed wool that is fed into the machine fibres of of such lengths as are required for the particular use to which the *combed* wool is to be put.

In other words, like the tobacco clippings, the noils are discharged from the machine as mere waste—in a *technical* sense, that is, though not within the meaning of the term "wool waste" as used in Section 135 (*a*) of the schedule, as will presently appear. An inspection of the noils themselves and the only evidence there was (that contained in the statements of the Plaintiff in Error) showed that they were still raw wool, and that, as just stated, they were themselves still uncombed and not arranged in parallel form; and there was

nothing, absolutely nothing, to show that they had been subjected to any process of manufacture, or even preparation for manufacture, except washing.

On the contrary, Plaintiff in Error stated in his affidavit (*infra*) that in manufacturing hats, *"he subjects the said noils to the identical processes that he would any other ordinary washed wool,"* and in his protest (R., p. 10), stated in effect that, so far as *utility* in manufacture is concerned, there is no difference between noils and the ordinary mixed-length wool. "My felt hat factory," he declared, "consumes this material for the purpose of obtaining a mild and soft hat, but is able to work up at any time the original material as produced directly from the sheep, if it attaches less value to these qualities of the finished felt." Going into the subject more at length, he added in his affidavit that—

> "It is sometimes considered that the noils in question produce slightly better results in the manufacture of felt hats for use in the tropics than ordinary long wool, felt hats manufactured from noils being softer and lighter than when manufactured from ordinary long wool; that, however, in Europe and America noils are mixed with ordinary long wool in the manufacture of felt hats. Affiant further says that here in Manila he often used ordinary long wool as admixture with noils in the manufacture of hats, having at the present time 500 kilos of wool in the Custom House for that purpose; that the hats manufactured from a mixture of noils and ordinary long wool are slightly stiffer and perhaps more durable, but that the difference in the utility of using noils or ordinary long wool or an admixture of both is really a question of opinion upon which men may well differ, and which question affiant has not yet definitely determined for himself, but to gain experience still at times employs both materials."

And, as a further indication that short-length wool was in fact no further advanced in condition than the ordinary unseparated raw material, *it appears that noils were possessed of less intrinsic value as a marketable commodity.* Plaintiff in Error in his protest of October 24, 1910 (R., p. 22), stated that the prices of wool rejected from the cards are rather cheaper than long wool," and the Court of First Instance, in the opinion accompanying its judgment overruling the Insular Collector, admitted that the record showed that the value of uncombed wool was P.3.00 per kilo and that of noils only P.2.00 per kilo.

We have not ourselves, we feel that we ought to confess, found any such showing in the record as that referred to by Judge Lobingier, but, since the court did make the statement and did treat the fact as having been in the record, and as it occurs to us that it may have appeared in some document which, like the letter of the Insular Collector to the Solicitor General or like the affidavit printed *infra,* may not have been sent up with the transcript in the case, we venture to make use of it in this argument.

That noils really have less value in the market, however, than the ordinary uncombed wool of mixed lengths, would seem clear from the statement in the affidavit above referred to that they "are also used in the manufacture of woolen cloth, but that the cloth produced from the manufacture thereof is *inferior* to the cloth produced from ordinary long wool; that in fact the noils must have an admixture of ordinary long wool before they can profitably be used in the manufacture of woolens"; and this would appear to be well established as a fact in commercial circles, for the Century Dictionary, in giving its definition of a "noil" as "the short fibre that is separated from the long fibre in the process of combing wool or cotton," says that these noils "are used for felting purposes or are made into *inferior* yarns, which are put into cloth to increase its thickness."

Arguing that noils could not be comprehended in any provision of the act specifically relating to raw wool because Plaintiff in Error had admitted that he used material of the sort known as noils in his hat factory for the reason that it could be made up into felt of a softer and finer quality; that, as a consequence, it must be more valuable to him; that neither the paragraph in the free list nor the wool schedule proper covers raw wool advanced in *value*, and that, therefore, such wool must be embraced in the residuary clause, since that clause has to do with materials, substances and articles not otherwise provided for and which are advanced in value as well as condition by some process or manufacture, the Judge in the Court of First Instance would appear to have placed himself in the rather awkward predicament of having held two ways with reference to the same subject.

For, to the contrary of the above, which was held in the opinion overruling the motion for a new trial, Judge Lobingier held in the opinion reversing the Insular Collector that noils were of a lower value in the market (P.2.00 per kilo, as compared with P.3.00 for ordinary uncombed wool)—and, of course, the market or general intrinsic value is the thing to which Congress had reference in the act, not the value to any particular person for any particular purpose. Otherwise, the burden would be on the customs officers of making inquiry in every case of an importation of that character as to the particular purpose for which the material was to be used and as to its value to the importer with respect to that particular purpose—an intention that ought not to be attributed to Congress if it can be avoided by any reasonable construction of which the law may be susceptible, since it would practically place the whole matter in the discretion of the customs officers and in effect make their functions judicial, administrative and legislative all in one, which would render the act objectionable, as we view the

matter, on constitutional grounds. Besides, such a practice, if put in effect, would inevitably lead to misrepresentation and fraud.

Counsel for Plaintiff in Error in the Supreme Court of the Philippines so aptly commented on the attitude of the Court of First Instance on this subject of value that we can add nothing more pertinent than to quote the following from their brief:

> "The court below found itself constrained to interpret a suitableness for a specific purpose, though combined with an actual decrease in price, as an advance in value. Uncombed wool worth P.3.00 per kilo advances in value and becomes noils worth P.2.00 per kilo! It seems that it should be accepted that the purpose of a combing machine is to produce combed wool and that the purpose of combing wool is the same. Noils are not a by-product" (as was argued by Judge Lobingier); "they are simply uncombed wool of a shorter fibre. The illustration drawn by the court from crude petroleum and vaseline does not seem to be a happy one. Noils remains raw wool. Vaseline does not remain crude petroleum. It certainly cannot be claimed that vaseline is a condition of coal oil either advanced or deteriorated. It would certainly strike one as curious to find the many valuable by-products of crude petroleum classified in a tariff law, or interpretation thereof, as coal oil. Vaseline or phenacitine are no more like crude petroleum than bourbon whiskey is like corn. It seems to us that no light can come from such illustrations. Noils are used for the same purpose as uncombed wool. It is not certain that they are better for any purpose. For many purposes they are certainly not as suitable, and, instead of being in a condition to be considered as wool in advanced condition, they must be considered as wool in a retrograde condition, for they must be mixed with other wool."

But the provisions of Schedule K of the tariff act of 1909 passed for the purpose of raising revenue for the United

States (and which, as we have said, we believe to be *in pari materia* with the act applying to the Philippines, and, therefore, one that may be considered in an effort to ascertain the intention of Congress respecting the provisions of the Philippines act here in question), the grouping of the provisions in the wool schedule of the Philippines act itself, the considerations we have above urged with reference to the purpose of Congress and as to whether or not it has been shown to be a fact in this case that the wool imported by Plaintiff in Error was further advanced, by any process or manufacture, either in value or condition, than washed—these, although they would seem sufficient to set at rest all doubt as to whether the paragraph in the free list relating to wool is applicable to wool of the character so imported, are not all that can be said on the subject.

There is another consideration, we respectfully submit, that shows that the intention of Congress could not have been otherwise than as we have indicated, and that is that at the time the act applying to the Philippines was passed, there was no industry in the Islands with which producers of raw wool and preparers of it for manufacture (up to the point of combing) could compete—there was no local supply of raw wool, no one employed in producing it, or in cleansing and baling it, or in creating a market for it among local manufacturers. Plaintiff in Error remarked in the statement he sent to the Board of Protests and Appeals: "Why was wool put on the free list? The only reason for this is that there is some local industry which is to be protected by the free entry of wool, *which must be imported as there is no home supply.*" (R., p. 10.)

This is a fact, however, that must have been within the judicial knowledge of the court below, irrespective of this assertion by Plaintiff in Error; for we take it that the absence

of any home supply of so important a material as wool in the manufacture of cloth and wearing apparel is one of those "matters of public knowledge" that the Philippines Code of Civil Procedure (Section 275) says, "shall be judicially recognized by the court without the introduction of proof," or, if not, that it is one that ought to be judicially recognized under the general principles of law governing the subject of judicial notice; and there were ample means by which, if the court did not know, as a matter of fact, what we have just said about the lack of local supply to be true, it could have refreshed its knowledge on such a subject.

The Philippine census of 1903 showed that there were then in the Islands only 30,428 sheep, and these not in herds, but widely scattered. The reports of the Director of Agriculture of the Islands show that it is not the custom there to shear the sheep—that there is a belief among the people in the Islands that if the wool should be cut off, the ants would bite the sheep to such an extent as to kill them. The *Philippine Agricultural Review* for 1911 contains the following statement respecting the industry, or, rather, absence of it, in that country:

> "Sheep are not found to any great extent in the Philippine Islands, the total number, according to recent date, being 88,760. There are no large ranches and nowhere is the industry conducted on a commercial basis, though in nearly every municipality a few native sheep are to be found running at large. The native sheep, probably introduced from Spain, are hornless and of a coarse wool variety. Owing, however, to the fact that no attention has ever been paid to breeding, or care taken in the management of the flocks, no pure breeds of uniform types are to be found among them. These sheep are allowed to roam about the barios at will, *no attention being given them, not even shearing. No use whatever is made of them,* except that occasionally one is killed for mutton."

It being clear from the above that the purpose of Congress in providing for the free admission of "wool not further advanced in condition than washed," could not have been other than to avoid the imposition of a duty that might retard, or prevent altogether, the development of certain lines of manufacture in the Philippines, it follows that there could have been no intention to tax raw wool of an inferior grade, and which could only be used as an adulterant or particularly in connection with the manufacture of felt, yet to admit free of duty wool of mixed lengths, which had a higher intrinsic or market value and which could be used, not only for those purposes, as Plaintiff in Error stated, but in the manufacture of woolen and worsted goods generally.

There was no more reason why one should have been discriminated against than the other. Neither—short of "combing," as a result of which noils were obtained—had to be subjected before importation to any process except washing that they could have undergone in the Philippines, and, so far as noils were concerned, since, although separated from the longer fibres, they reverted on leaving the combing machine to the tangled state in which they were when fed into it, they had to be subjected in the factory of Plaintiff in Error to the identical processes of preparation for manufacture into felt as those to which the mixed-length wool would have had to be subjected.

The same was true, as would appear from the state to which the noils reverted after leaving the combing machine, and from what Plaintiff in Error said in his affidavit (*infra*), as to their preparation for other manufactures—at least for all that appears to the contrary in the record, for it must be remembered that the Government offered not one particle of evidence disproving, or tending to disprove, a single statement made by the Plaintiff in Error, or even bringing into question the appropriateness or *bona fides* of his exhibits.

POINT III.

The Wool, or Noils, in Question in this Case were not "Wool Waste" Within the Meaning of the Term as Used in Section 135 of the Tariff Act of 1909, which was in Effect in the Philippines at the Time the Merchandise was Imported. Plaintiff in Error is Not Estopped By His Declaration of it as "Wool Waste" From Claiming in this Court that it Ought to Have Been Admitted Free of Duty.

From the quotations in the foregoing that we have made from the record it sufficiently appears that, notwithstanding the classification by the subordinate customs officers of the above mentioned importation as "wool waste" and the assessment of duty thereon at the rate of 10 per cent ad valorem under Section 135 (*a*) of the tariff act that was in effect in the Philippines at the time the merchandise was imported, both the Insular Collector of Customs and the Court of First Instance of Manila held, on appeal, that the wool in question was not waste, but was what was commercially known as "noils," and that it had, therefore, been wrongly classified under said section; and this view of the matter the Supreme Court of the Islands afterwards approved.

The declaration of the merchandise as wool waste by the importer's agent, the Insular Collector and both of the courts below ignored—and rightly, since, as was held by this court in cases hereinbefore cited, the dutiable character of an article imported must be ascertained, not by the description of it by the importer in his declaration, but by an examination of the article itself in the condition in which it was imported; and, as this was not an action originated by Plaintiff in Error in the Court of First Instance to recover duties unlawfully exacted—for he had already obtained from the

Insular Collector a decision sustaining his protest—but was, on the contrary, a proceeding by the Government in the nature of an appeal, we do not apprehend that this court will regard Plaintiff in Error as estopped by that declaration from claiming here, as he did before all the tribunals below, that the goods in question were not in fact wool waste and ought to be admitted free of duty under paragraph 311.

Nevertheless, the Court of First Instance said in the opinion reversing the Insular Collector (R., p. 2) that—

> "Among its" (the Record's) "contents is a certified copy of the importer's declaration, wherein the commodity is expressly described, over the signature of his agent, as 'wool waste.' It is true that the invoice merely mentions wool, but this was not signed by the importer. It may also be true, as his counsel says, that 'the importer declares them (the goods) as they are classified by the customs officials and then enters his protest.' *But in this case it appears from his letter of August 27, 1910" (the protest itself), "that he had learned of the classification two days after the date of the declaration and that his protest was not made until four weeks later.* Now, this declaration is one of the few items of competent evidence in the record. It is literally a 'declaration against interest'—an admission —which, being part of the record, is properly considered here (*Bagsa* v. *Nagramada,* 11 Phil. 177). But, while this admission by the importer would seem to justify us in classifying these 'noils' as 'wool waste,' we are convinced, after scrutinizing the record, that this would not be a proper classification."

So we think it well to remind the court of the explanation of this apparent declaration against interest that we have given above, under Point II of this brief, and to say, in addition, that there is nothing in the record—at least as on file in this court—that substantiates the statement just

quoted, to the effect that it appears that Plaintiff in Error learned of the classification of the merchandise in question as wool waste two days *after* the date of his agent's declaration of it as such.

What the record does show is that the goods arrived in Manila on the 29th of July, 1910 (R., p. 14); that Plaintiff in Error received a communication from the Collector of Customs, dated August 1st, 1910, notifying him that the wool had been "entered" under paragraph 135 of the tariff act at 10 per cent ad valorem (id., p. 10); that a declaration (the one headed in the record, "Declaration of the Importer or Agent"), dated August 5, 1910—not two days before, but five days after, the date of that communication from the Collector—was filed by the agent of Plaintiff in Error, wherein it was stated, in effect, that the entry in the case contained the true numbers, weights, quantities, etc., also a true classification and description of the goods, and that the actual cost, market value, etc., were correctly stated in the invoice (id., p. 16).

The record further shows that the duties that would probably be due were estimated at P.550 ($275) by the Chief of the Marine Division the same day, August 5, 1910 (id., p. 16); that the wool was inspected and reported on by the Examiner, August 16, 1910 (id., p. 15); that the account was not liquidated until the 20th of August, 1910 (id., p. 17); that the duty found to be due under the classification as wool waste was P.333.78 ($166.89); that this amount was entered as paid on the 23rd of August, 1910 (id., p. 15-17); that the amount deposited in excess was refunded (id., p. 15), and that the protest filed by Plaintiff in Error was dated August 27th, 1910 (id., p. 10), only four days after the date of the entry of the duty as having been paid, though for the filing of his protest he was allowed five days by law.

The declaration last above referred to does not mention wool waste, and, as has just been said, is dated, not two days before, but five days after, the date of the Collector's communication, notifying Plaintiff in Error of the entry of the merchandise as of that character. It mentions, however, the "within entry" and the "invoices and entry which he" (the importer) "now presents." It was probably, therefore, attached to or accompanied some entry wherein the goods were described as wool waste; but, except for this, there is nothing whatever, so far as the *record* is concerned, to show that Plaintiff in Error or his agent ever did declare the goods imported to have been wool waste; and this declaration, considered alone, cannot be held to show it, we respectfully submit, because, aside from the invoice, just what paper or papers it was attached to or accompanied is not disclosed.

The only document in the record in which the merchandise is, in fact, described as wool waste is that which is printed on page 15. This paper is headed, "Importer's Declaration," it is true, but it is also headed "Examination and Liquidation Return," and appears to be an instrument of that character rather than any sort of declaration by the importer, for it is made up of a number of brief notes referring to the merchandise and to the various proceedings by the customs authorities with reference thereto. It, like the other declaration above mentioned, the one designated "Declaration of the Importer or Agent," is not dated two days before the date of the notification that Plaintiff in Error received from the Collector—it is not dated at all, in fact—and the "description of merchandise in terms of tariff law" it contains does not even purport to have been supplied by Plaintiff in Error or his agent.

Near the bottom the paper is signed by "W. E. Black, Secretary, Board of Protests and Appeals." Under his signature are some further notes respecting the invoice, country

of origin of the goods, rate of exchange, etc., and it is under *these* notes, and not to the body of the document, that the signature of the agent of Plaintiff in Error appears. His attorney in the Court of First Instance, however, seems in his *argument* to have admitted that Plaintiff in Error did in fact declare the goods to be wool waste before he filed his formal protest in writing, and Plaintiff in Error said in his affidavit (*infra*) that it was still his custom so to declare them "and thereupon present his protest, believing and understanding that that is the course necessary for him to pursue to avoid fines," but, from the above it is clear, we think, that the judge of the Court of First Instance was mistaken in stating that the record showed that he made the declaration before and not after he was notified how the goods would be classified by the officers in the Custom House.

Coming now to the question whether the wool in this case was waste within the meaning of that term as used in Section 135 (*a*) of the Philippines tariff act, we respectfully suggest to the court that, like the word "washed" when used to describe wool in a certain state of preparation for manufacture, the term "wool waste" has both a commercial, or ordinary, and a technical, significance, which differ, however, in that, in the former case, the technical and commercial meanings are the same and, in its ordinary sense, the word "washed" has a broader meaning, but, in the latter case, the commercial and ordinary meanings are the same and, in its technical sense, the term "wool waste" is of much broader application. As stated in the Encyclopedia Americana (Vol. 16, Title, "Waste"), "waste is such material as is rendered either wholly or partially useless in the manufacture of products and articles of all kinds, *but the name is sometimes retained long after a substance, at one time of little or no value, has been utilized.* In every manufacturing process, mechanical or chemical, there is waste."

It was not denied below that there are instances of courts, in their construction of certain provisions of tariff acts, having held that such an expression was used by Congress in its *ordinary* sense—for instance, the words "washed" and "scoured" in the paragraph of the act of 1883, providing that the duty on wools "imported washed shall be twice the amount of duty to which they would be subject if imported unwashed, and the duty on wools of all classes which shall be imported scoured shall be three times the duty to which they would be subject if imported unwashed." With reference to this provision, this court held in the case of *Patton* v. *United States* (159U. S. 500), hereinabove quoted from, that "the act does not impose a duty on scoured wool as such by its *commercial* designation"; that it "refers, not to the commercial designation, but to the *fact* whether the wool has been actually scoured or washed or is imported unwashed."

Another instance is supplied by the provision in this Philippines tariff act that places in the free list "wool not further advanced in condition than washed"—though this has not yet been passed on by this court. It is obvious, as it seems to us, that Congress refers in that provision, not to the status of the wool in the market as an article of commerce, but to its state of preparation for manufacture when imported—"to the fact," as this court said in the Patton case, "whether the wool has been actually scoured or washed, or is imported unwashed," for the Philippines act makes no distinction between simple washing and scouring. The word "washed" appears to have been used in its broadest sense. If the wool is not advanced in condition further than it would be advanced by washing, whether on the sheep's back, on the skin, by scouring or in any other way, it is to be admitted free.

That such was in fact the intention there can be no doubt, according to our view of the matter. Otherwise, why

should Congress have regarded it as necessary to put into the wool schedule of the act applying to the United States, and which was considered at the same time and approved the same day as this Philippines act, the definitions of "unwashed," "washed" and "scoured" wools which its purpose was that these terms should receive, and why should it have omitted from the Philippines act any provision to the effect that scoured wools should be dealt with by the customs authorities as further advanced than washed? Surely such an omission is significant. There would have been no reason for it if Congress had not intended that wool washed in *any* manner should be admitted free and if such free admission had not been in accordance with the general theory or policy of the act.

But this we do not believe the court will regard as essential, because, whether Congress intended to refer only to what is *commercially* known as "washed wool" or that the expression should be understood in a sense broad enough to include the kind designated commercially as "scoured" could make no difference in this case, since there is not a particle of evidence tending to show that the wool involved herein had been both washed and scoured. Plaintiff in Error admitted it had been washed and that is as far on this subject as the record goes.

There is no doubt, however, that instances of this kind constitute exceptions to the rule. In such cases the words in controversy are held to have been used in their ordinary sense because it is clear, on application of the appropriate principles of construction, that Congress intended so to use them—that unless they are so interpreted, the purpose of the lawmakers would be defeated. Where such intention does not appear, "it is a cardinal rule of this court," this court said in the case of the *American Net and Twine Company* v. *Worthington* (141 U. S. 468, 471), "that in fixing the classification of goods for the payment of duties, the

name or designation of the goods is to be understood in its known commercial sense and that their denomination in the market when the law was passed will control their classification without regard to their scientific designation, the material of which they may be made or the use to which they may be applied." To this the court cites a number of cases.

The theory of the Government with reference to this phase of the question at issue herein, was thus stated in the brief filed by the Solicitor General of the Islands in the Supreme Court below: " 'Wool waste,' " he contended, "is a commercial term, embracing 'noils,' or waste resulting from combing." * * * The foregoing authorities" (referring to Spons' Encyclopedia of Manufactures and Raw Materials, the Encyclopedia Britannica, Beaumont on Woolen and Worsted Cloth Manufacture, etc.), "use the terms 'noils' and 'waste' interchangeably and synonymously, and, commercially speaking, they seem to be one and the same thing"; and he argued from this and from the rule of this court, as stated in the case of the American Net and Twine Company, which is quoted above and which he quoted in his brief, that—

> "That term 'wool waste' as used in paragraph 135 (*a*) of the tariff law must be understood to mean any particles of wool that become enmeshed in the teeth of the comb or are thrown off in, or during the process of, combing the wool or otherwise further advancing its condition after washing, scouring, teasing, burring and oiling. The fact that such noils or waste may be useful in the manufacture of shawls and inferior yarns and felt is immaterial. If it were not valuable for one or more purposes, it would not have been made dutiable."

To mention the last of these propositions first, whether or not an article or material is valuable for one or more purposes is no test of its appropriateness for selection for

duty. Many things were placed in the free list of this Philippines act that are valuable for any number of purposes—ores, for instance, of many sorts, raw cotton, hides, skins, paper pulp and stock, fibres, certain vegetables, hops, malt, ice, etc.—and many things were made dutiable that are possessed of far less value than ores and raw cotton and raw wool. Whether a thing is to be made dutiable or not depends on the policy of the administration—whether the tariff is to be for revenue only, or is to involve complete protction of home industries, or whether only partial protection. If only partial protection, it depends on just what industries are to be protected and on the extent of the protection intended in each case.

And the statement that, "commercially speaking, they" (noils and waste) "seem to be one and the same thing" is absurd in view of the fact that these short hairs that remain in the machine after the long hairs or "tops" have been combed out of a mass of mixed wool have acquired any distinctive designation at all. The name "noils" is associated in no way with the idea of waste; the word "waste" is not attached to it. It would have been, we have no doubt, if noils were in fact of that character, for from the provisions of the act of Congress of the same date establishing the rates of duties on imports into the United States, it appears that there are wool wastes of many kinds. In Section 372, "top waste, slubbing waste, roving waste, ring waste and garnetted waste" are mentioned, and in Section 373, "yarn waste, thread waste and all other wastes composed wholly or in part of wool." "Noils," "shoddy" and "wool extract" are provided for in Section 373 *in addition*. Of none of the latter is the word "waste" made part. They were made dutiable at the same rate as yarn waste and thread waste, that is all.

It is evident that it was for the very purpose of distinguishing short hairs of wool from what is known com-

mercially as waste that they were given an individual name. It is equally evident, we submit, that Congress would not have thought it necessary to make use of the individual name if it had not been thought that because of the *commercial* significance that that name had acquired, the customs administrative officers, persons engaged in commerce and the courts would regard what is known as noils as not having been intended to be included in the general expression: "and all other wastes composed wholly or in part of wool." If, therefore, the contention of the Solicitor General is sound that the term "wool waste" as used in paragraph 135 (*a*) of the Philippines tariff act must be construed to have been used in its *commercial* sense, it cannot possibly be held to include noils, for it is clear from the above that neither in commerce nor by Congress are noils designated as waste, but that they have become so useful for purposes of manufacture that they have acquired a distinctive name of their own, and that, at the time of the enactment of the Philippine tariff law, they were no longer known as wool waste, if they ever had been so known.

But, as already stated, it appears in the above quotations from his brief that the Solicitor General of the Philippines argued in the court below that in the description he quoted from certain authorities on wool manufacture of the several processes through which it is the custom to put raw wool for the purpose of bringing it to a state suitable for combing, the words "noils" and "waste" are used interchangeably; that, therefore, noils and waste are one and the same thing, and that "the term 'wool waste' as used in Section 135 (*a*) of the tariff law must be understood to mean any particles of wool that become enmeshed in the teeth of the comb, or are thrown off in or during the process of combing the wool, or otherwise further advancing its condition after washing, scouring, teasing, burring and oiling."

Any particles, perhaps—yes. But noils are not mere particles. They are short fibres of wool rejected by a machine that is adjusted to separate from a mass of mixed-length wool the fibres of longer lengths and arrange them in parallel form. In other words, they are the result of *a process of selection,* not manufacture, and, though suitable for manufacture, are not themselves, by combing, subjected to any process of manufacture. (See statement submitted by Plaintiff in Error to the Board of Protests and Appeals, R., pp. 9-10.)

The answer, however, to this proposition of the Solicitor General's is that we do not contend that noils are not a *species* of waste—waste in a certain technical sense, that is, though not in the commercial or ordinary sense. They are waste, of course, considered strictly with reference to their character as material rejected by a combing or carding machine in one of the processes of preparing the longer lengths of the mixed wool for manufacture, also considered with reference to the particular object of that process, which is to select from the mass these longer fibres. In that sense the authorities the Solicitor General quoted from may well have used the terms interchangeably. They were describing certain preliminary steps in the course of such preparation. Combing was one of them, and, *so far as combing alone is concerned* and not taking into consideration the character and utility of the rejected material, noils are waste.

But, as indicated above, they are waste only in a relative sense. What we contend is—and it is in this that we differ with the Solicitor General of the Islands—that noils are not of the sort that is commercially or ordinarily known as waste; and we go farther, and respectfully submit also, that they are not waste *in fact,* and that Congress never intended that they should be so classed by the customs authorities when it provided in this Philippines tariff act that "wool not further advanced in condition than washed" should be

admitted free and that "wool waste" should be taxed at the rate of ten per centum ad valorem.

That they are not what is commercially or ordinarily known as waste we have already attempted to show by the considerations pointed out above. There is, however, direct evidence of the fact in the record—a fact that was not disputed below except in argument, for, it will be remembered, the Government submitted no evidence whatever respecting that or any other question at issue in the case. On the other hand, in his first protest (R., p. 10), Plaintiff in Error—himself a manufacturer and engaged in commerce —did inform the court that "the wastes mentioned under tariff Section 135 (*a*), resulting from the combing or carding machines used in the manufacture of woolen textiles, consist of broken fibres unfit for the manufacture of felt hats."

He said in his protest in one of the cases consolidated with the case at bar (R., pp. 32-33): "In former times I used to employ in the mixture for my hat bodies part of real wool waste, resulting from old cloth reopened, but this raw material has been definitely eliminated as it gave no satisfactory result." In the statement he submitted to the Board of Protests and Appeals (R., p. 9), he said: "Wool waste consists of refuse or broken particles thrown off in the process of manufacture. My noils contain about 5-7% of waste" (should be 7.5,% apparently). "Ninety-two per cent are, therefore, good wool of short length. It is certainly not right to declare this as waste. With the same right all wool could be declared as waste, as there is a small percentage of waste even in the best wool."

And from this it also appears that the second element of our theory is correct, i. e., that noils are not waste, in fact, but, like raw wool of mixed lengths, are themselves a material of manufacture; and it is because of this that we have

concluded, and respectfully submit to the court, that the third element of that theory is accurately deduced, i. e., that it was not the intention of Congress that noils should be classed by the customs officers of the Philippines as wool waste.

Like cotton waste, ordinary wool waste, of the kind known commercially and ordinarily as waste, has uses of its own *as such*. This will appear presently from a quotation that we shall make from an opinion of this court. We desire to say first, however, that under the policy of the Congress that passed the tariff act in question, and which policy obviously was to encourage local manufactures (though, of course, as an incident to the main purpose of obtaining revenue to defray the expenses of government), there was no reason why a thing like ordinary wool waste should be admitted free, since it was not used, like noils, as material with which to manufacture hats or cloth, but had uses of its own as waste, and for which wool that was not in fact waste would have been unsuitable because so much more valuable for purposes of manufacture.

An indication of this is found in the act itself: in its treatment of cotton. Paragraph 309 places "raw cotton" in the free list. Paragraph 91 imposes a duty of 10 per cent ad valorem on "cotton waste"—making use simply of the words "cotton waste" and with no provision, in terms, for cotton noils, though, like wool noils, they result from the processes of combing and carding. The next duty-imposing provision in the cotton schedule is for "yarns" (Paragraph 92). It is the same, in effect, with "hides and skins, raw, green or dry, but not tanned," also "vegetable fibres, raw or heckled," also "bristles, animal hair * * * not further advanced in condition than washed," also "paper pulp and paper stock," and gold, silver and platinum in bars, pieces, etc., and iron, copper and other ores.

The question as to what ordinary wool waste is was raised in this court in the case hereinbefore cited, of *Patton* v. *United States* (159 U. S. 500, 502-3). As stated above, this was a case that grew out of a classification of the wool imported therein, made by the customs authorities of the United States under a certain provision of the tariff act of 1883. In that act it was provided that "scoured wool, broken tops, Class I, costing under thirty cents per pound in the unwashed condition," should be dutiable at the rate of sixty cents per pound, though the rate for "waste" was only ten cents per pound. The paragraph including waste reads simply: "woolen rags, shoddy, mungo, waste and flocks, ten cents per pound." The character of the stuff involved was thus described by the court in the opinion:

> "The importation in question consisted of wool which had been scoured, then carded and prepared, then put upon a comb from which it comes in long lengths known as slivers or slubbing. It is then put through a process of gilling, which forms the slivers into a less number of slivers of greater thickness. These slivers are then taken into the drawing room and finished, from whence they come out in the form of round balls, called 'tops.' These tops become new articles of merchandise, which are sold to the spinners, who spin them into worsted yarn. In the process of making the tops, short ends of wool are produced, which are called and sold in the trade as 'Botany laps' or 'Botany waste,' the two terms being synonymous in the English market. After the top is produced, it sometimes happens that it is shorter in staple than was anticipated, or not of the proper color, or that it has to be recarded to get out the burrs, or for some other reason it becomes unmerchantable. In such cases it has always been the practice in England to break up the tops as unfit for ordinary use, and in that condition they are sold for the same purpose as wool waste and are known and sold commercially as Botany laps or Botany

waste. * * * The testimony upon both sides indicates that this artificial kind of waste is, for obvious reasons, more uniform and clean and, therefore, more valuable, than genuine waste."

Stating its reason for sustaining the classification of this as wool that had been scoured instead of merely as waste, the court said:

"We are at liberty to consider its ordinary definition" (referring to the word "waste"), "which will be controlling except so far as it may be varied by a commercial designation obtaining at that time. *Saltonstal* v. *Wiebusch*, 156 U. S. 601. 'Waste' is defined by Webster as 'that which is of no value, worthless remnants, refuse. Specifically: remains of cops or other refuse resulting from the working of cotton, wool, hemp and the like, used for wiping machinery, absorbing oil in the axle boxes of railroad cars,' etc. In this connection, and in the same clause of the statute, other words are included, undoubtedly referring to articles of the same or of a similar nature. These are 'rags'; 'shoddy', defined as 'a fibrous material obtained by deviling or tearing into fibres refuse woolen goods, old stockings, rags, druggets,' etc.; 'mungo,' which properly signifies the disintegrated rags of woolen cloth as distinguished from those of worsted, which form shoddy, and 'flocks,' defined as 'woolen or cotton refuse, old rags, etc., reduced to a degree of fineness by machinery and used for stuffing upholstered furniture' and also as 'very fine sifted woolen refuse, especially that f[illegible] shearing the nap of cloths, used as a coating for wall paper to give it a velvety or cloth-like appearance.'

"The prominent characteristic running through all these definitions is that of refuse, or material that is not susceptible of being used for the ordinary purposes of manufacture. It does not presuppose that the article is absolutely worthless, but that it is unmerchantable and used for purposes for which merchanta-

ble material of the same class is unsuitable. * * * It appeared from the evidence that the waste" (in question), "whether intentionally or unintentionally produced, was an article having different qualities from the merchantable wool and was used as an adulterant. It is, however, used like other scoured wool, being mixed with it in the carding machine and is worth only ten or fifteen cents less per pound than scoured wool of the same character; and hence, in view of the tariff rates, is an article of more value than scoured wool for the purposes of importation. * * * The main question is whether the action of the collector was correct in refusing to allow them to be entered under the denomination 'waste.' If the ordinary definition of waste as refuse matter thrown off in the process of manufacture is to control, it is quite clear that the importations in question are not susceptible of this meaning. The common definition of waste lends no support to the theory of the defendants."

This case, as it seems to us, is exactly in point with the case at bar—and this not only with reference to the interpretation of the word "waste" as used in Section 135 (*a*) of the Philippine tariff act and the words "not further advanced in condition than washed" as used in Section 311 in the free list, but with reference to the construction that ought to be placed on these provisions. To its bearing on the latter section of the Philippines act we have already called the attention of the court. With reference to its bearing on the interpretation of the word "waste" as used in Section 135 (*a*), it is equally significant because both in the act of 1883 and in that of 1909 applying to the Philippines, the term made use of is the same: simply "waste," with no descriptive word or words whatever attached to it to indicate the kind of waste referred to.

In the Patton case the stuff the importer sought to have classified as waste was really waste, in a technical sense, because it was refuse so far as a certain process was con-

cerned and could not be manufactured and sold for the purpose for which the material of which it had originally formed part was manufactured and sold. Is not the same true of noils? Again, the material involved in the Patton case had "different qualities from the merchantable wool and was used as an adulterant," yet it "was used like other scoured wool, being mixed with it in the carding machines." So it was with noils, only noils would appear still more nearly to resemble the raw, uncombed, mixed-length wool, with respect to utility, because they were useful not alone as an adulterant but as a complete material of manufacture. Also, the stuff in question in the Patton case had been distinguished "by a commercial designation obtaining at that time." Had not the stuff in the case at bar?

The material referred to in the Patton case was *even called* waste of a sort—"Botany waste"—but when the commercial designation was given the material in the case at bar, no idea of waste was associated with it. It was called simply noils. And, in view of the circumstances in the Patton case, the court held, in effect, that the material there involved was not waste of the sort intended by Congress because the material it construed Congress to have intended when it made use of the single word "waste" was that which was ordinarily understood to be waste in commercial circles: "refuse resulting from the working of * * * wool, * * * used for wiping machinery, absorbing oil in the axle boxes of railroad cars," etc., and the court said that "if the ordinary definition of waste as refuse matter thrown off in the process of manufacture is to control, it is quite clear that the importations in question are not susceptible of this meaning." This "ordinary definition," the court had previously held, "will be controlling except so far as it may be varied by a commercial designation."

POINT IV.

The Allegations Made in Argument by Counsel for the Philippine Government in the Supreme Court of the Islands in Support of the Contention that the Wool in Question was in a Condition Further Advanced than Washed were not Proven, Nor was any Evidence Even Tending to Prove them Submitted. Unless they were Facts of which the Court could Take Judicial Notice, therefore, they were not Competent as Evidence. In any Event they were Utterly Immaterial, Ought not to have been Considered Below, and Under the Rulings of this Court can not be Considered Here.

In an attempt to supply deficiencies in the record, caused by his neglect to submit evidence in the Court of First Instance, the Solicitor General of the Philippines, as we have already pointed out, quoted in his brief in the Supreme Court below from certain authors of treatises on wool manufacture for the purpose of showing (a) that the word "noils" was regarded as synonymous with "waste," and (b) that wool which had been brought to the state of preparation required to fit it to undergo the process of combing must necessarily have been advanced to a condition further than washed.

So far as waste is concerned, we have explained, and we repeat, that those authorities are not in point here, according to our view of the matter, because the authors used the word "waste" in a technical, and not in the ordinary commercial, sense; and it was in its ordinary commercial sense that Congress must have made use of the word, as we believe, for nothing was added to extend its meaning and no particular commercial designation was attached to it to indicate that it was intended to apply to shoddy, mungo or flocks, or to Botany, top, slubbing, roving, ring, garnetted, yarn or thread waste, or any other sort

of waste than the ordinary kind that is known in commerce simply as waste, and which is used merely as waste and not as a material of manufacture.

With respect to the point that wool which had been brought to the state of preparation required to fit it to undergo the process of combing must necessarily have been advanced to a condition further than washed; that it could not, therefore, properly be classified under Paragraph 311 of the Act, and that, as a consequence, it could not be admitted free of duty, the Solicitor General contended in his brief that "the raw material or washed wool must pass through the following changes of condition to make it suitable for manufacturing purposes; scouring, to remove the scour; drying, to remove the water; teasing, or loosening up matted locks; burring, to remove entangled burrs; oiling, to render it soft and elastic," and quoted from Beaumont on Woolen and Worsted Cloth Manufacture five full pages of closely printed matter descriptive of the processes of drying, teasing, burring and oiling.

These statements that were quoted from the work of Professor Beaumont were not proven. No evidence was offered even tending to prove them. It was not even shown by the counsel for the Government of the Philippines that Professor Beaumont was competent to write authoritatively on the subject. How much influence, if any, what he said had in inducing the Supreme Court below to affirm the judgment of the Court of First Instance, we have no way of ascertaining from the record, because, in the opinion, the upper court gave no reason for its decision except to say, in effect, that it found no error in the ruling of the Court of First Instance; but, as we think it possible that the quotations made by the Solicitor General of the Philippines may be repeated in the brief of counsel for the Government in this court, or that similar authorities may be quoted from on the ground that they state facts of

which the court will take judicial notice, we think it well not to let the matter pass unnoticed.

We respectfully submit, therefore—

1. That the technical processes that may or may not have been involved in the course of preparing wool for manufacture are not, even if invariable, of a character that brings them within the principle stated by this court in *Brown* v. *Piper* (91 U. S., 37, 42-3), *i. e.*, that "courts will take judicial notice of whatever is generally known within the limits of their jurisdiction, and, if the judge's memory is at fault, he may refresh it by resorting to any means for that purpose which he may deem safe and proper."

2. That this court held in *Behn* v. *Campbell* (205 U. S. 403, 408) that in cases coming here on writ of error to the Supreme Court of the Philippines, as in those coming up from the Circuit Courts, there is a "vital distinction between appeals and writs of error which has always been observed by this court and recognized by legislation"; that "an appeal brings up questions of fact, as well as of law, but upon writ of error only questions of law apparent on the record can be considered"; that "there can be no inquiry whether there was error in dealing with questions of fact," and that no allegations of fact, therefore, of the character of those above referred to, whether such facts would otherwise be judicially cognizable or not, can be considered at this stage in the case at bar.

3. That, even if judicially cognizable, the facts alleged in the argument of the Solicitor General of the Philippines in the Supreme Court below were not competent to be considered as evidence because it was not shown in connection with them that any of the processes described in the quotation from Professor Beaumont's work on Woolen and Worsted Cloth Manufacture were essential for the purpose of preparing the wool for the process of combing, or that

the wool here in question had in fact been subjected to those processes; also that the allegations referred to were immaterial in that it was not shown that the several processes above mentioned resulted in any permanent advancement in condition of wool of the character in question, which was but a residuum of the wool originally subjected to said processes, if it ever was so subjected.

Obviously, scouring would not insure that this residuum would not get dirty again after removal from the combing machine and while lying around in the works and being gathered up and gotten ready for packing in bales; and especially would it be likely to accumulate dirt if oiled, as Professor Beaumont says it customarily is. It is clear, too, that drying is of no permanent consequence. The wool in question could have been wet again, and had to be in this case for the purpose of rewashing, according to the undisputed testimony of Plaintiff in Error. It is the same with oiling. Oil evaporates and dries, and in this case must have had to be removed anyway in the rewashing. Nor could teasing result in any permanent betterment if, after the long hairs have been combed out of the loosened mass of which the noils originally form part, they leave the combing machine in a tangled condition and are afterwards gathered up in the same tangled condition and packed in bales.

It is conceivable, of course, that burring might permanently advance the condition of the noils as well as the combed wool, but even Professor Beaumont says that only some classes of wool have to be subjected to that process ("for instance, Buenos Aires," he says in his book, and three of the bales in question were invoiced as Buenos Aires); but there was no showing, nor a particle of evidence tending to show, that any of the wool in the 94 bales involved in this case had in fact been burred or that in those particular instances it was necessary to burr it. On the contrary,

as hereinbefore stated, Plaintiff in Error testified that, for the purpose of felting, "he subjects the said noils to the identical processes that he would any other ordinary washed wool." (See affidavit, *infra.*)

In his affidavit Plaintiff in Error says that "all noils imported by affiant must be oiled, although frequently or usually only by means of solution of soap; that they must be teased to overcome the caked or packed condition obtained in the bales, and that they must be carbonized" (burred) "to remove the vegetable substances. Affiant further says that he subjects the said noils to the identical processes that he would any other ordinary washed wool."

POINT V.

The Supreme Court of the Philippine Islands Erred in Not Having Reversed the Court of First Instance and in Not Having Sustained the Decision of the Insular Collector of Customs for the Reason That There was no Evidence Whatever to Warrant the Holding That the Wool in Question Was in a Condition Further Advanced than Washed and That it Should Not be Admitted Free of Duty.

No specific facts were found by the Supreme Court below, nor were any found by the Court of First Instance in the holding that the upper court approved except (a) that "the Collector heard no testimony"—which finding, it will be remembered, was based on utterly incompetent evidence and used as the basis for the refusal to give the decision of the appellate customs officer the benefit of the presumption of correctness to which it was entitled—and (b) that since noils were more valuable than wool waste and "an inspection of the samples, moreover, shows a marked difference between that labelled 'wool waste' and those labelled 'noils,'" the latter being "much cleaner and of finer quality," noils were not wool waste within the meaning of the Philippines tariff act of 1909.

Aside from the above, the holding was simply that "the importer's letters of August 27, 1910" (the original protest, R., p. 10), "and May 4, 1911" (the statement filed with the Board of Protests and Appeals, R., p. 9), "show that the raw wool, after being washed, is separated by machinery, the long hairs being taken up by the machine and the short ones left in the form of the 'noils' in question. We are of opinion that this mechanical separation is a 'process' within the meaning of Paragraph 303, and, being fur-

ther advanced than washing, takes the article out of Paragraph 311" (the one in the free list). This last, we respectfully submit, is a conclusion of law drawn from an utterly erroneous, because unwarranted, conception of an undisputed set of facts.

Of course, as already indicated, we are aware that this court held in the case of *Behn* v. *Campbell* (205 U. S., 403, 408), that as the jurisdictional act (32 Stats., 695) provides that "final judgments or decrees" of the Supreme Court of the Philippine Islands "may be reviewed, reversed, modified or affirmed" by this court "on appeal or writ of error by the party aggrieved" only "in the same manner, under the same regulations, and by the same procedure, as far as applicable, as the final judgments and decrees of the Circuit Courts of the United States," and that since in cases of writs of error to the Circuit Courts "only questions of law apparent on the record can be considered and there can be no inquiry whether there was error in dealing with questions of fact," the scope of the inquiry here, in cases coming up on writs of error to the Supreme Court of the Philippines, is likewise limited.

In this connection, however, neither of the courts below in the case at bar was dealing with any *question* of fact. The facts so far as shown by the record, were undisputed. It had been stated by Plaintiff in Error—and this not in the affidavit subsequently filed by permission of the court but in one of the papers on which the Government was content to submit the case without further evidence—that "when wool is being combed by machine, the short hairs are not gripped by the tools while the long ones are being gripped and combed"; that "the short hairs leave the combing machine again in the same state as they have been put into same"; that "they are not parallel, and, therefore, not combed" (R., p. 9).

In his original protest he said (R., p. 10): "The first mentioned long and coarse fibers are the proper material fit for the manufacture of woolen textiles whilst the short and soft fibers are useless for this purpose but are especially employed in the manufacture of felt hats and other industries. My hat factory consumes this material for the purpose of obtaining a mild and soft hat *but is able to work up at any time the original material as produced directly from the sheep* if it attaches less value to these qualities of the finished felt. In a protest in one of the cases consolidated with the one at bar he further said (R., p. 23): "The purpose of the carding process"—and of course the principle is the same with respect to the process of combing—"is not to produce noils but to produce carded wool *and the short wool consequently remains raw wool, just as the long wool,* not further advanced than washed."

This, aside from the samples that were submitted by Plaintiff in Error, is *all that was in evidence* respecting the point stated in the part of the opinion of the court just above quoted, and in that part of the opinion is stated the *sole* ground on which Judge Lobingier held that Section 303 (*b*) of the tariff act was applicable in the case at bar, and not Section 311. For it will be observed that he did not hold that any of the processes mentioned in Point IV of this brief (*i. e.,* scouring, drying, teasing, oiling and burring) advanced the condition of the wool, but simply that *combing* was a "process" within the meaning of Section 303 and that the condition and value of the residuum or noils were advanced by reason of the separation of the long from the short hairs that resulted from that particular process. As he explained in his opinion overruling the motion for a new trial—

"Wool in which long and short fibers are indiscriminately mixed can hardly be in the same 'situation with regard to external circumstances' as that containing only one class or the other; and wool so separated would seem to be further advanced in condition than washed."

There can be no question, according to our view, that when Congress employed the expression "advanced in condition," it meant advanced *in condition for use or manufacture.* It is clear that in the matted, tangled state in which this baled wool was when imported, the only use to which it could have been put, except as material of manufacture, was as ordinary waste, and it certainly could have been no more valuable or in better condition for use as mere waste because of the separation of the long from the short fibers. And, in respect of its use for purposes of manufacture, Plaintiff in Error stated unequivocally (in effect) *in the only evidence there was in the case,* and which was not even disputed in argument so far as we can gather from the Government's brief in the Supreme Court below, that this separation that resulted from the process of combing or carding made no difference whatever in the condition of the residuum or noils so far as their utility as material for the manufacture of felt was concerned; that they were actually *deteriorated* in condition, in fact, because of their unfitness for use in the more important manufacture of textiles, except as an adulterant, and it is obvious that because of this deterioration they were not as intrinsically valuable, as a marketable commodity, as the mixed long and short raw wool. As already pointed out, Judge Lobingier admitted that the price of the noils was much less (R., p. 2).

We believe, therefore, that it was plain error of law on the part of the Supreme Court below not to have re-

versed the judgment of the court of First Instance on the ground that there was, not merely not a preponderance of evidence, but *absolutely no evidence whatever* whereon to base its holding in this matter; and we respectfully submit that, as it seems to us the state of affairs thus presented is one that constitutes an exception to the rule stated by this court in the case of *Behn* v. *Campbell* (*supra*), in respect of these facts. We believe that this court is at liberty to examine the evidence for the purpose of determining whether there was *any* evidence before the Court of First Instance by which to justify its decision and whether the upper court erred in not having reversed the trial court because of the fact that there was none, just as this court may examine the evidence for the purpose of determining the applicability or non-applicability of other principles of law.

CONCLUSION.

In brief, in this decision of the Court of First Instance, which the Supreme Court below approved and adopted as its own, Judge Lobingier obviously proceeded on the theory that the burden was on the party who is now Plaintiff in Error here, Mr. Gsell, to prove facts to sustain a decision of the Insular Collector of Customs that was not adverse to his interests, but in his favor, instead of on the Philippine Government either to produce evidence constituting a sufficient showing that that officer erred in his conception of the character and condition of the wool in question, or to demonstrate by argument that, admitting the facts to have been as stated by the importer, the interpretation or construction given the act by the Insular Collector was clearly erroneous, as must be done by the Government of the United States when appealing from decisions of the Board of General Appraisers to the United

States Court of Customs Appeals, for the jurisdictional provisions of the act of Congress and the Philippine Commission are similar in that respect.

Also, instead of holding that in the absence of such a showing by the Philippine Government, the decision of the Insular Collector must be presumed to have been correct, Judge Lobingier proceeded on the theory that it was entitled to no weight whatever because that officer heard no testimony—that the "so-called decision was not really a judicial one" anyway; that it was "nothing more than an administrative order" (R., p. 5); and, in arriving at the conclusion to which he was brought by this reasoning, he also proceeded on the theory that as "the primary and only specific purpose" of the Philippines tariff act of 1909 was "to raise revenue," no doubt respecting the proper classification of the merchandise should be resolved in favor of the free list—and this in spite of the holding of this court in *American Net and Twine Co.* v. *Worthington* (141 U. S., 468, 474) and the other cases hereinbefore cited (pp. 20, 21) to the effect that, since the intention of Congress to impose a higher duty should be expressed in clear and unambiguous language, such doubt ought to be resolved in favor of the importer.

Also, apparently, Judge Lobingier ignored altogether all the other principles of interpretation and construction to which attention has been called in this brief. In resolving his own doubts, he seems not to have taken into consideration the reason for the restriction of free wool to such as had not been further advanced in condition than washed, or the purpose of the process which he held advanced the condition of the wool, and which was not merely to separate the long and short hairs but to select the long from the short ones and arrange the ones so selected in parallel form; and, apparently, he took no stock in the evident pur-

pose of Congress, in formulating this Philippine tariff act, to encourage local manufactures by' the free admission of wool which had not been subjected to any process of preparation abroad that would put Philippine business enterprise and Philippine labor at a disadvantage from a competitive viewpoint. He appears to have ignored, also, the long line of opinions of this court affirming and reaffirming a principle which we think the same as, or at least analogous to, that on which the Insular Collector decided that the classification here in question ought to be made.

Here the question was whether subjecting the mixed-length wool to the combing process advanced in condition the residuum or short fibers that were left in the machine. In the cases just referred to, the question was whether subjecting the various materials there involved to certain processes of preparation for manufacture constituted them manufactured articles or manufactures of those materials. In the case of *Worthington* v. *Robbins* (cited *supra*, p. 29), this court held that a material known as white hard enamel, which was imported for use as facing for watches, scale columns of thermometers, steam cock dials, etc., was "to all intents and purposes raw material," since, "in order to be dutiable as 'watch materials,' the article imported must be in such form of manufacture as to show its adaptation to the making of watches." In *Seeberger* v. *Castro* (cited *supra*, p. 38) it was held that clippings from the ends of cigars and pieces broken from tobacco in the process of manufacture, and which were subsequently used as material for the manufacture of cigarettes, etc., were not manufactures of tobacco, though they must have undergone some of the same processes of preparation as the cigars themselves.

In the case of *Hartranft* v. *Wiegman* (121 U. S., 609, 613) the question, as the court stated it, was "whether

cleaning off the outer layer of shells by acid and then grinding off the second layer by an emery wheel so as to expose the brilliant inner layer is a manufacture of the shell, the object of these manipulations being simply for the purpose of ornament and some of the shells being afterwards etched by acids so as to produce engravings on them." "We are of opinion," the court continued, "that the shells in question were not manufactured and were not manufactures of shells, within the sense of the statute imposing a duty of 35 per cent upon such manufactures, but were shells not manufactured and fell under the designation in the free list. *They were still shells. They had not been manufactured into a new and different article having a distinct name, character or use from that of a shell.* (So with noils. They are still wool; they are not manufactured into a new and different article having a different character or use from that of ordinary raw wool.) And the court went on:

> "The application of labor to an article, either by hand or by mechanism, does not make the article necessarily a manufactured article within the meaning of that term as used in the tariff laws. Washing and scouring wool does not make the resulting wool a manufacture of wool. Cleaning and ginning cotton does not make the resulting cotton a manufacture of cotton. * * * In *Frazee* v. *Moffitt,* 20 Blatchford, 267, it was held that hay pressed in bales, ready for market, was not a manufactured article although labor had been employed in cutting and drying the grass and baling the hay. * * * In *United States* v. *Potts,* 5 Cranch, 284, round copper plates, turned up and raised at the edges from four to five inches by the application of labor, to fit them for subsequent use in the manufacture of copper vessels, were held not to be manufactured copper. In the case of *United States* v. *Wilson,* 1 Hunt's Merchants' Magazine, 167, Judge Betts held that marble which had been cut into

blocks for convenience of transportation are not manufactured marble but are free from duty as being unmanufactured."

See, also, *Junge* v. *Hedden*, 146 U. S., 233; *Lawrence* v. *Allen*, 7 How., 785, and *Sonn* v. *Magone*, 159 U. S., 417, and cases there cited.

But because of his idea that since the primary purpose of the act was to raise revenue and that, therefore, no doubts could be resolved in favor of the free list, Judge Lobingier seems actually to have cast about for some basis whereon to hold that the merchandise involved in this case was dutiable, and having utterly ignored the "test of definiteness," applied a provision that had no specific reference to wool and decided that the provision in the free list, which did in terms refer to wool, and which, by the application of appropriate principles of construction, he would have found clearly to comprehend wool in the condition in which the noils in question were when imported, could not be held to embrace them.

All this, as it seems to us, was error because of which the judgment of the Supreme Court below, sustaining the decision of the Judge of the Court of First Instance that Section 311, placing wool not further advanced in condition than washed in the free list, does not apply, ought to be reversed. It seems to us also that the holding that the wool or noils here involved were not waste within the meaning of that term as used in Section 135 (*a*) of said act ought to be sustained, both for the reasons stated in Point III of this brief and because this court does not consider questions of fact presented in writs of error to the Supreme Court of the Philippine Islands.

Respectfully submitted by—

HARRY W. VAN DYKE,
Counsel for Plaintiff in Error.

Washington, D. C.,
April 5, 1915.

APPENDIX.

Affidavit of Carlos Gsell.

(*Caption Omitted.*)

Carlos Gsell, being the first duly sworn, on oath deposes and says: That he is the importer and appellee in this proceeding; that he is well acquainted with the trade in wool, and that he knows and understands the preliminary processes to which wool is subjected in preparing the same to be used for the various manufacturing purposes; that of the processes oiling and teasing have no permanent effect, and are not intended to have a permanent effect upon wool; that wool is oiled when it becomes too dry to be used in any process of manufacture without first rendering it more pliable; that scoured or washed wool is always immediately oiled after the process of scouring or washing and when not immediately used thereafter frequently becomes dry again and is oiled a second time before being used in manufacture; that the process of teasing is always necessary after the wool has been baled, wherein it is subjected to great pressure; that the process of burring and washing or scouring gives to the wool a permanent better condition; that there is a further process to which wool is subjected to render it free from all vegetable substances which is carbonizing, by which process the wool is subjected to a chemical solution and subsequent heat by means of which all the vegetable substances are carbonized, and the wool fibre remains intact and free therefrom.

Affiant further says that the noils in question and all noils imported by affiant must be oiled, although frequently or usually only by means of solution of soap; that they must be teased to overcome the caked or packed condition obtained in the bales, and that they must be carbonized to remove the vegetable substances. Affiant further says that he subjects the said noils to the identical processes that he would any other ordinary washed wool.

Affiant says that it is sometimes considered that the noils in question produce slightly better results in the manufact-

ure of felt hats for use in the tropics than ordinary long wool, felt hats manufactured from noils being softer and lighter than when manufactured from ordinary long wool; that, however, in Europe and America noils are mixed with ordinary long wool in the manufacture of felt hats. Affiant further says that here in Manila he often uses ordinary long wool as admixture with noils in the manufacture of hats, having at the present time 500 kilos of wool in the Custom House for that purpose; that the hats manufactured from a mixture of noils and ordinary long wool are slightly stiffer and perhaps more durable, but that the difference in the utility of using noils, or ordinary long wool, or an admixture of both, is really a question of opinion upon which men may well differ, and which question affiant has not yet definitely determined for himself, but to gain experience still at times employs both materials. Affiant further states that in his protest of Oct. 24th, 1910, he declared that a mixture produced the best hat, although in the protest presented on his behalf, Aug. 27th, 1910, it is stated that noils produced the better hat.

The said noils are also used in the manufacture of woolen cloths, but that cloth produced from the manufacture thereof is inferior to the cloth produced from ordinary long wool; that in fact the noils must have an admixture of ordinary long wool before they can profitably be used in the manufacture of woolens.

Affiant further says that at the hearing in the Customs House in this proceeding, Mr. Landsvater and affiant were present and made oral statements which were received as affiant believed at the time as evidence in the case.

Affiant further states that he still declares noils as wool waste and thereupon presents his protest, believing and understanding that that is the course necessary for him to pursue to avoid fines.

(Signed) CARLOS GSELL.

Subscribed and sworn to before me this 12th day of January, 1912. Affiant exhibited his cedula, No. F.4000, issued at the City of Manila, on January 11th, 1912.
(Seal of the Notary Public.)

(Sgd.) W. L. WRIGHT,
Notary Public.

My commission expires December 31st, 1912. Notarial No. 99, Page 21, Book I.

Received Copy, Jan. 13, 1912.
(Sgd.) F. H. NESMITH,
Asst. Atty.

I certify that the foregoing is a true copy of the original affidavit of Mr. Carlos Gsell, found at page 88 of the original bill of exceptions certified by the trial court in the case of Carlos Gsell vs. El Administrador de Aduanas (The Insular Collector of Customs), R. G. No. 7958, appealed to the Supreme Court of the United States.

Manila, 16th day of February, A. D. 1914.
(Seal of the Supreme Court of the P. I.)

(Sgd.) V. ALBUL,
Clerk of the Supreme Court of the Philippine Islands.

Supreme Court, U. S.
FILED
APR 24 1915
JAMES D. MAHER
CLERK

No. [redacted] 31

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

CARLOS GEELL, PLAINTIFF IN ERROR,

v.

THE INSULAR COLLECTOR OF CUSTOMS OF THE PHILIPPINE ISLANDS.

On Writ of Error to the Supreme Court of the Philippine Islands.

BRIEF FOR DEFENDANT IN ERROR.

[illegible] Washington, D. C.

INDEX.

	Page
STATEMENT OF THE CASE	1
FACTS	1
Some misconceptions at the threshold which should be brushed aside	4
ARGUMENT	7
I. This commodity, commercially known as "wool noils," having passed through one or more processes that advanced it beyond the condition of washed wool, and indeed placed it in a distinctive commercial category, falls not within the free list (par. 311) as "wool not further advanced in condition than washed," but within paragraph 303 (b), as material further advanced in condition by a process or manufacture, and dutiable thereunder	7
1. What are "noils"?	8
2. Wool noils are a commodity distinct from the wool out of which they came	11
3. This separation alone, then, advances noils to a condition beyond that of washed wool and nearer to the point where they become a manufactured article	14
4. How far noils are advanced beyond the free-listed washed wool may be seen by considering other necessary processes between the washing and the separation into noils	15
Argument contra examined	16
II. The principle of statutory construction invoked by plaintiff in error to the effect that in case of doubt a customs law should be construed favorably to the free list has no application here	19
CONCLUSION	21
Appendix "A"	22

AUTHORITIES CITED.

	Page
Act of August 5, 1909 (36 Stat. 153, 168, 169)	2, 20
Campbell v. *United States*, 107 U. S. 407	13
Castle Bros. v. *McCoy*, 21 Phil. R., 300, 306	21
Eidman v. *Martinez*, 184 U. S. 578, 583	21
Frame v. *United States*, 143 Fed. 692	13
G. A. Decisions 2725, Treasury Department	13
In re Guggenheim Smelting Co., 112 Fed. 517, 520	21
Lewis German & Co. v. *United States*, 128 Fed. 467	14
Oil Co. v. *United States*, 78 Fed. 467; 87 Fed. 453, 456	13
Philippine Act No. 355, sec. 177	16
Seeberger v. *Castro*, 153 U. S. 34	16
Shallus v. *United States*, 155 Fed. 215	13, 17
Tariff Hearings, vol 5, Committee on Ways and Means, 60th Cong., p. 5222	12, 18
Tariff Hearings, vol. 4, Committee on Ways and Means, 62d Cong., p. 4491	12, 18
Treasury Decisions 12856, 15394, 31824, 32085	13
Treasury Decisions 29458	14
Uy Chaco Sons v. *Collector*, 25 Phil. R., 548	21

In the Supreme Court of the United States.

OCTOBER TERM, 1914.

CARLOS GSELL, PLAINTIFF IN ERROR,
v.
THE INSULAR COLLECTOR OF CUSTOMS,
No. 303.

BRIEF FOR DEFENDANT IN ERROR.

STATEMENT.

This case is here upon writ of error to the supreme court of the Philippine Islands to review a judgment of that court affirming a judgment of the court of first instance of Manila, which reversed a decision of the Insular Collector classifying the commodity in question, "wool noils," in the free list, and held that the commodity should be classified as materials not otherwise provided for, and directed that duty thereon at fifteen per centum *ad valorem* be collected accordingly.

FACTS.

The essential facts of this case, though surrounded by much irrelevancy of record and by the adumbration of plaintiff-in-error's conjectural argument, are neither confused with the one nor obscured by the other. They are unusually simple and unmistakably clear.

The commodity in question was invoiced as "9 bales of wool," was declared by the importer, the plaintiff in error, as "wool waste." The collector of the port assessed duty on it as "wool waste" at ten (10) per centum *ad valorem;* the importer paid the duty under protest, claiming that the product was "noils" and should be classified as "wool not further advanced in condition than washed" under paragraph 311 free of duty, and thereupon appealed to the Insular Collector of Customs.[1] The Insular Collector found that the article in question was commercially

---

[1]The relevant portions of the Philippine Tariff Act (36 Stat. 153, 168, 169) are as follows:

Class VII. Wool, Bristles, Hair, and manufactures thereof.

Group 1. Unmanufactured.

135. Wool not otherwise provided for—

(*a*) Combed, prepared for yarns, *wool waste*, ten per centum *ad valorem.*

(*b*) Combed, and carded or dyed, fifteen per centum *ad valorem.*

* * * * * * *

Class XIV. Miscellaneous.

* * * * * * *

303. Materials, substances, and articles not otherwise provided for—

(*a*) Not advanced in value or condition by any process or manufacture, ten per centum *ad valorem.*

(*b*) *Further advanced, but not manufactured into articles, fifteen per centum ad valorem.*

(*c*) Manufactured into articles, twenty-five per centum *ad valorem.*

* * * * * * *

Free List:

* * * * * * *

Par. 311. Bristles, animal hair *and wool not further advanced in condition than washed.*

known as "noils," which, in his opinion, was not "wool waste," but was "wool not further advanced in condition than washed," entitled to entry free, and sustained the protest. Thereupon, at the request of the Secretary of Finance and Justice, pursuant to law, the case was submitted to the court of first instance upon the record made up and certified by the Insular Collector. That court concurred with the Insular Collector that the article was commercialy known as "noils," but held that it was neither "wool waste," as classified and assessed by the collector of the port, nor "wool not further advanced in condition than washed," as classified in the free list by the Insular Collector, but that these noils are properly classified under the catch-all paragraph 303 (*b*), which provides for a duty of fifteen per centum *ad valorem* on materials, substances and articles not otherwise provided for, when further advanced in value or condition by any process or manufacture, but not manufactured into articles—reversed the decision of the Insular Collector, and directed that the commodity be so classified and duties collected accordingly (R. 23). Motion for new trial being overruled (R. 35), the case was taken to the Insular Supreme Court, whose judgment affirmed in all things that of the court of first instance (R. 38, 39). The one question, therefore, before this court, deduced out of assignments of error somewhat vague and circuitous, is whether the Insular Supreme Court erred in holding

that these noils should be classified not as "wool not further advanced in condition than washed" entitled to entry free, but as materials, etc., falling under the language of said paragraph 303 (*b*), and dutiable accordingly. (The case below is reported in 24 Phil. R., 369).

SOME MISCONCEPTIONS AT THE THRESHOLD WHICH SHOULD BE BRUSHED ASIDE.

Plaintiff-in-error's prolix argument is, to the ordinary intelligence at least, confusing; it is devoted only in small part to the main question which, moreover, it obscures beneath a cloud of minor contentions. Before proceeding to the only proposition in the case, those contentions founded, it is submitted, in misconception and supported by unsound and conjectural argument, should be put aside with a word, lest they remain to confuse this simplest of issues.

It is contended, with some show of earnestness (Br. pp. 11–13), that the court of first instance, reviewing the case solely on the record made and certified by the Insular Collector, without additional evidence, reversed the decision of that official, which, in the absence of countervailing evidence, the law presumed to be right. The fault of the argument is evident. The Collector's conclusions of law only were disturbed. His conclusions of fact both courts accepted, though it is not conceded that a court is obliged to do so under every circumstance, for the court's examination of the samples, for instance,

might have revealed characteristics of the material so determinative as to justify a different finding. However, the courts affirmed the Collector's decision as to the denomination, quality, characteristics and condition of the commodity and the process to which it had been subjected. The remaining question was, under what section of the statute does such an article fall—a question of law, a matter of statutory construction, upon which the courts disagreed with the Collector. Surely, there is no presumption that judges are less competent to construe the law than an administrative official.

In the same connection, much is made of the Collector's letter filed with the court stating that no testimony was taken at the administrative hearing, and of the effect it is conjectured to have had upon the court of first instance (Br. 19, 20–23, *et passim*). The contention is that the letter should not have been considered at all, and that it resulted in error, since the court felt free to attach less weight to facts found only from a consideration of official documents and an inspection of samples. Not only is this conjectural, but it is also beside the point, since, as just said, the facts found by the Collector were not disputed.

Again, it is complained, as showing that the court of first instance erroneously overruled the decision of the Collector, that plaintiff-in-error's affidavit (Br.-App.), which is claimed to have been inadvertently

omitted from the transcript here, shows that the Collector heard testimony which influenced his decision and of which the court had no knowledge; that the Insular Supreme Court also ignored the affidavit and, finally, did not include it in the transcript (Br. 24, 25). The affidavit, even had it been providently presented, and believed, could have had no effect upon the decision of the court of first instance nor of the supreme court, since the contents, so far as relevant, only tended to establish the facts already found by the Collector and concurred in by the court. Besides, the affidavit was in support of a motion for a new trial in the court of first instance, was ineffectual to that end, and not appearing in the bill of exceptions can not be a part of the record on error to the insular supreme court nor to this court. Of course, the statement of the clerk of the court below that the affidavit was inadvertently omitted from the transcript is of no avail. The affidavit is not a part of the record here, nor can it be "filed" in this court as such. If the record is defective in that respect, counsel's remedy was clear.

Such argument as is found in counsel's brief from its beginning to "Point I", as well as in some parts of the remainder, even if not entirely beside the point—as it is—rests upon a series of conjectures concerning which no question was properly raised in the court below and which should not detain this court even were they properly presented here. In line also with

this observation are seen the three additional assignments of error (Br. 7, 8) which were not assigned below but originated in counsel's brief, presumably with a view to curing some supposed defect in the two assignments properly made. While these latter assignments might, if critically scrutinized, be found to need some such assistance, they are presumed sufficient to raise the question whether the courts below erred in classifying and holding this commodity dutiable.

We now proceed to the following

ARGUMENT.

I.

THIS COMMODITY, COMMERCIALLY KNOWN AS "WOOL NOILS," HAVING PASSED THROUGH ONE OR MORE PROCESSES THAT ADVANCED IT BEYOND THE CONDITION OF WASHED WOOL, AND INDEED PLACED IT IN A DISTINCTIVE COMMERCIAL CATEGORY, FALLS NOT WITHIN THE FREE LIST (PAR. 311) AS "WOOL NOT FURTHER ADVANCED IN CONDITION THAN WASHED," BUT WITHIN PARAGRAPH 303 (b), AS MATERIAL FURTHER ADVANCED IN CONDITION BY A PROCESS OR MANUFACTURE, AND DUTIABLE THEREUNDER.

The parts of the statute whose construction is in question are quoted in the footnote, page 2, *ante*.

1. What are "noils"?

The facts found below are the facts to be considered here. The commodity in question is what is commercially known as "noils." This is undisputed and is at the base of the case. The importer claimed that the commodity was "noils," in his protest; the Collector so found, and both courts concurred. The only question is as to the classification.

The importer in his protest said—

> Noils are the short hairs of the wool. When wool is being combed by machine the short hairs are not gripped by the tools, while the long ones are being gripped and combed. The short hairs leave the combing machine again in the same state as they have been put into same, they are not parallel and therefore not combed. (R. 9.)

Further on he shows—a fact universally known and necessarily established in the case—that the process of separating the noils (short hairs) and the yarns, or "tops," (long hairs) is to make each kind available for the manufacturing purposes to which it is best and primarily adapted (R. 10):

> Every original lot of wool derived from the sheep consists partly of long and comparatively coarse fibers and partly of short and supple ones. The first mentioned long and coarse fibers are the proper material fit for the manufacture of woolen textiles, while the short and supple fibers are useless for this

> purpose but are especially employed in the manufacture of felt hats and other industries. In order to separate these two classes of fibers of quite different qualities, the original wool has to pass of course some machinery.

It was for the purpose of making felt hats that the plaintiff in error (a hat manufacturer) imported these noils.

The supreme court (R. 38) held that "the classification of the merchandise in question made by the court of first instance is in accordance with the fact and law applicable thereto."

The term "noils," then, which the commodity was found to be, carries with it a distinct and unmistakable meaning, as was found in this case and as the word is authoritatively defined. (Century Dict.; Beaumont on Wool Manufactures, p. 22; Encyclopedia Brit., "Wool"). When "washed" wool has progressed to the condition just preceding manufacture into articles, its components, differing in all but organic substance and adapted to widely different uses, must be separated, each to be manufactured into articles for which it is primarily suitable—one into felt and the other into textiles. The former component, when thus separated, is noils.

Such was this commodity found to be, and it was necessarily and likewise found that this commodity had all the attributes and qualities of noils and had

indeed gone through all the necessary intermediate processes between "washed" wool and "noils."

The Collector found—

> that the article in question is commercially known as "noils" consisting of short hairs of wool, and what is left when the wool is being combed by a machine. The short hairs are not taken up by the machine and combed as are the long ones, but leave the combing machine again in a mass which is neither combed nor waste. * * * It is shown that ninety-two per cent of this article is again used for manufacturing purposes

but held that inasmuch as, in his opinion, no process had been applied to it which had advanced it in value or improved its condition, the commodity should be classified on the free list as washed wool.

The court of first instance, in its opinion reversing the classification directed by the Collector, said—

> We are of the opinion that these "noils" are properly classified under paragraph 303 (*b*) of the Philippine Customs Law. The importer's letters of August 27, 1910, and May 4, 1911, show that the raw wool, after being washed, is separated by machinery, the long hairs being taken up by the machine and the short ones left in the form of "noils" in question. We are of the opinion that this mechanical separation is a "process" within the meaning of par. 303, and, being further advanced than washing, takes the article out of par. 311. (R. 2–3).

And in the opinion denying a motion for a new trial, the court further said—

> Wool in which long and short fibres are indiscriminately mixed can hardly be in the same "situation with regard to external circumstances" as that containing only one class or the other. And wool so separated would seem to be "further advanced in condition than washed" even if it has "escaped being combed."

And after adverting to the fact established that the primary use of the noils was for the manufacture of felt hats for which the long hair was not suitable and to the manner of their production, referred to the noils as "a by-product of wool formed during the carding process." (R. 3–5.)

2. Wool noils are a commodity distinct from the wool out which they came.

Of course noils are wool in the sense of physical substance, that is, they are grown on the sheep's back, and presumably are of the same organic nature; but they are not known as wool, either in the ordinary or commercial sense. Intermingled in nature with another component with which, in the practical world, they have nothing in common but their origin, they must be separated therefrom in order to be of any use. Without this separation, the composite product, wool, is little fit either for textiles or felt. Noils are an injurious element in the one as are yarns in the other.

Upon separation, however, the noils become a thing of value; they become for practical commercial purposes something different from what they were while in the product out of which they came—different in name, different in character, and different in use. While not a new creation in the sense of having passed through an organic change, in the commercial sense they are truly so. That noils are a distinct commodity is generally recognized. They have been distinctly specified in the United States Tariff Acts for the past twenty-five years (See App. A). Indeed, so distinct are noils from the main product out of which they come that they are not infrequently referred to as a "by-product" (Vol. 5, Tariff Hearings, Committee on Ways and Means, 60th Cong., p. 5222; Vol. 4, Tariff Hearings, Committee on Ways and Means, 62d Cong., p. 4491). They were so designated by the court of first instance in this case. While the relation of noils to the parent and principal product is perhaps better expressed by calling them an incidental product rather than a by-product, still frequent designation of noils by the latter term indicates how far in the commercial concept they differ from the wool mass and from the other component.

Analogies also are enlightening. It has been held that rice powder, an article composed almost wholly of husks left from the process of manufacturing the grain into starch and largely used and imported for

the manufacture of linguista, a purpose for which a glutinous substance like rice flour would not be suitable, is a by-product, like bran, and not rice flour but a manufactured article not otherwise provided for (Treasury Decision, 12,856). Disks cut from sheets of tin plate in the manufacture of cans in order to leave openings for filling the cans, and used to some extent for closing the openings in smaller cans and a variety of other purposes, are a by-product, and an article "wholly or partially manufactured from tin plate" (Appraisers Decision, adopted by the court in *Shallus* v. *U. S.*, 155 Fed. R., 215). Silk noils are something other than silk in the condition of the common mass out of which they come, they are *silk partially manufactured* (T. D., 31,824 and 32,085). Camel-hair noils are not to be classified as camel hair under the Tariff Act of 1890 (G. A. 2725, G. A. Decisions, Treasury Dept., p. 594). Petroleum residuum is a by-product of petroleum, classified as a non-enumerated article (T. D., 15,394). Oil cake made from linseed by the separation thereof into oil and oil cake is an article of manufacture (*Oil Co.* v. *U. S.*, 78 Fed. R., 467, 87 Fed. R., 453, 456; *Campbell* v. *U. S.*, 107 U. S. 407). Husks left from the manufacture of grain into starch are a by-product, dutiable as a non-enumerated article (T. D., 12,856); residuum from grinding pepper is classified as a spice not otherwise provided for (*Frame* v. *U. S.*, 143 Fed. R., 692). Ginger-root cake is a by-product left from extracting

the essence of pulverized ginger root run through a still (*Lewis German & Co.* v. *U. S.*, 128 Fed. R., 467). The Treasury officials have also held in effect that the separation process itself is a process of manufacture and the noils an article manufactured or produced within the meaning of the drawback section of the Tariff Act of 1897 (T. D., 29,458).

An incidental product which differs so radically from the commodity out of which it came ought not to be classified with it when room is easily found elsewhere.

3. This separation alone, then, advances noils to a condition beyond that of washed wool and nearer to the point where they become a manufactured article.

This separation is certainly a process in the ordinary sense of the word, and in the commercial sense such a separation is an essential, indeed a creative, process, without which there would be no wool felt and the textiles would be adulterated, as it were, by the admixture of an unfit element. If the separation is essential to put this component of wool in a condition available for manufacture into felt, it is, then, a process which advances the material to a condition beyond that in which it existed prior to the separation; that is, beyond wool not further advanced in condition than washed, and nearer to, but short of, the point of manufacture into articles. If this be true, noils fall precisely within paragraph 303 (*b*).

That the "noils" must be thus advanced in condition is inherent in the very meaning of the word. Indeed, by the analogies found in cases coming under the various United States Tariff Acts (some of which are cited in the preceding paragraph) wool noils may themselves be said, in a sense, to be a "manufactured article," or "partially manufactured article," though, it is presumed, not a manufactured article in the sense of 303 (*c*) of the Philippine Tariff Law.

4. How far noils are advanced beyond the free-listed washed wool may be seen by considering other necessary processes between the washing and the separation into noils.

Wool must first be washed, either on the sheep's back or shortly thereafter on the skin, to remove the dirt adhering to the wool. The United States Tariff Act of 1909 prescribed that—

> Washed wools shall be considered such as have been washed with water only on the sheep's back or on the skin. (Par. 367.)

The Philippine Tariff Law was passed on the same day with the United States Tariff Act of 1909, and it is reasonable to suppose that the law-makers would have the term "washed wool" mean the same thing in both Acts.

It is a matter of common knowledge that "washed" wool is not in condition for the combing or separation process. It has to be (1) "scoured," (2) "dried," to remove the water, (3) "teazed," to loosen up the

matted locks, (4) "burred," to removed the entangled burrs and like foreign substances, and (5) "oiled," to render it soft and elastic. Each of these is a distinct and necessary process, conducted on a large scale, with immense machines (Encyc. Brit. Vol. XVII, p. 808). Even, then, if "washing" should in fact include "scouring," as counsel contends, still it is a long way from washed wool to noils. These processes necessarily precede the separation into noils. If, as plaintiff in error claimed, it was necessary for him, because of evaporation or other changes of condition in transit, to put the noils through some of these various processes after he had received them, that is immaterial; for the classification and assessment of imported merchandise is by statute based on its condition at exportation. (Sec. 177, Philippine Act No. 355.)

ARGUMENT CONTRA EXAMINED.

Counsel seems to contend that this process of separation is not a process of manufacture at all. The statute says "any process *or* manufacture." Surely separation is a process in the ordinary sense of the word, and, presumably, in the legal sense, if there be any distinction; indeed, the separation is a process *of* manufacture. "A manufacture is defined as the process of making anything by art, or of reducing materials into form fit for use by the hand or by machinery" (*Seeberger* v. *Castro*, 153 U. S., 34). While

this process of separation or combing does not constitute a complete manufacture, still there is a transformation of materials into new articles of commerce—a changing and advancing of the condition of the material.

It is also contended that the separation is not a process in respect of the noils, inasmuch as the purpose is to get out the yarns and not the noils. Mere purpose, in view of the facts, matters nothing anyway, but the argument carries its own refutation. It is like saying that yarns can be separated from noils without separating noils from yarns at the same time. Wool noils are not waste in any sense; they are a valuable product, answering a distinct want in the manufacturing world. Though yarns are the superior product in quantity and value (R. 2), it cannot be said, in the face of the facts, that the process of separation has no regard to noils, inasmuch as it is by this process alone that the noils are made available for use. That two merchantable articles, each useful for different purposes, result from a single operation is a tribute to modern economical methods, and to the wise economic provisions of Nature; but that is no reason for regarding one product to the exclusion of the other (see Appraiser's opinion in *Shallus* v. *U. S.*, *supra*).

It is said also that if the assessment as made is affirmed, the result will be that the duty levied on the noils will be higher *ad valorem* than on the other more

valuable component, combed wool or yarn. Even if so, such results are not an unusual concomitant of subjecting goods to duty at specific rates. It is a function not of the courts but of the law-makers to assume to readjust the tariff schedules on "equitable" principles, and what are unjust inequalities is even more a mere matter of opinion in customs legislation than elsewhere. An inspection, however, of the United States Tariff Laws (see App. A) shows that the duty on noils, when wool products are taxed at all, has been comparatively heavy, has indeed, been called "prohibitive," and has evoked from hat manufacturers protests to the Ways and Means Committee (see Tariff Hearings cited *supra*) without avail.

Counsel also goes away beyond the record and states that the plaintiff in error is the only importer of wool and manufacturer of felt hats in the Philippines, and argues that wool was put on the free list through his representations and to encourage his industry. If this be a fact, this court cannot take judicial notice of it. The most that can be said is that if the claim be true the United States, in passing an Act to raise revenue for the Philippines, was very considerate of plaintiff-in-error's special personal interests. The fact is that only "washed wool" was put on the free list. Even if Congress was generous enough to protect plaintiff-in-error's hat industry to the amount of several thousand dollars annually, it did not intend to enable him to have the raw

wool put through all the processes between washing and manufacture, and still permit him to bring it in duty-free, as raw wool. The greatest of Philippine industries is home labor, and why should not Philippine labor be protected in the matter of advancing in condition further than "washed" raw wool imported for manufacturing purposes? That is what the Tariff Law does.

It is also argued that the Act enumerates so many forms of wool subject to specific duties the enumeration must be assumed to be complete. Clearly this is *petitio principii*, assuming what ought to be proved. It may be remarked that the most important schedules are seldom or never complete and that legislators well recognize the advisability, even the necessity, of supplementing them by the catch-all clauses so common and effective in modern tariff legislation.

The only remaining point of counsel's argument that may be of sufficient importance to arrest the attention of this court will be taken up in the following proposition.

II.

THE PRINCIPLE OF STATUTORY CONSTRUCTION INVOKED BY PLAINTIFF IN ERROR TO THE EFFECT THAT IN CASE OF DOUBT A CUSTOMS LAW SHOULD BE CONSTRUED FAVORABLY TO THE FREE LIST HAS NO APPLICATION HERE.

While counsel advanced below, and advances here, minor considerations which he thinks should have controlled the construction, and which have been

shown to be untenable, a more confident contention is involved in the present proposition. He relies upon the general rule that the sovereign is bound to express its intention to tax in clear and unambiguous language, and that, therefore, doubts in the construction of customs laws should be resolved in favor of the importer.

Now, in the first place, there is no room here for construction. The language of the statute is clear and unambiguous, and conveys to the ordinary and disinterested mind a meaning free from substantial doubt. In the second place, the rule as stated, without qualification, should have no application to a tariff law like the one in question in which Congress has declared its intention to tax all importations except those specifically exempted. That such was the legislative intent is evidenced by the enacting clause,[2] the numerous catch-all clauses, and the

[2]The enacting clause of the Philippine Tariff Law (36 Stat. 153) is as follows:

> "That on and after sixty days following the passage of this act, except as otherwise specifically provided for in this act, there shall be levied, collected and paid upon all articles, goods, wares, or merchandise of every kind and class entering the jurisdiction of the Philippine Islands, from any place or places, including the United States and its possessions, and in any manner whatsoever, either with intent to unlade therein, or which, after such entry, are consumed therein, or become incorporated into the general mass of property within said Islands, the rates of import duty which are by this act specifically provided."

general scheme of the Act. It is believed that this court has had occasion to apply the rule only while construing Tariff Acts in which there was no evidence of such legislative intent.

It has been recognized that the rule might be qualified in its application so as to require words of exemption from general laws imposing taxes to be construed strictly (*Eidman* v. *Martinez*, 184 U. S., 578, 583, and cases there cited). And on principle where the legislative intent is to impose a tax upon all importations except those specifically exempted the free list should be construed strictly. So it was held in *In re Guggenheim Smelting Co.*, 112 Fed. R., 517, 520, and so it has been held, without exception, by the Philippine court. (*Uy Chaco Sons* v. *Collector*, 25 Phil. R., 548; *Castle Bros.* v. *McCoy*, 21 Phil. R., 300, 306; 24 Phil. R., 369, this case below).

CONCLUSION.

The judgment of the Supreme Court of the Philippine Islands should be affirmed.

S. T. ANSELL,
Attorney for Appellee.

WASHINGTON,
April, 1915.

"A"

ACT OF—	NOILS.		WOOL, UNWASHED.	
	Paragraph.	Duty.	Paragraph.	Duty.
1890	388	30 cents per pound.	384	1st and 2d class, 11 and 12 cents per pound.
			385	3d class, if valued at 13 cents or less per pound, 32 per cent ad valorem.
			386	3d class, if valued at over 13 cents per pound, 50 per cent ad valorem.
1894	279	(Carbonized) 15 per cent ad valorem.		Free.
1897	362	20 cents per pound.	357	1st class, 11 cents per pound.
				2d class, 12 cents per pound.
			358	3d class, if valued at 12 cents or less per pound, 4 cents per pound.
			359	3d class, if valued over 12 cents per pound, 7 cents per pound.
1909	373	20 cents per pound.	369	1st class, 11 cents per pound.
				2d class, 12 cents per pound.
			370	3d class, valued at 12 cents per pound or less, 4 cents per pound.
				3d class, valued over 12 cents per pound, 7 cents per pound.
1913	651	Free.	650	Free.

"A"

LONG YARNS, "TOPS."

Valued at not more than 30 cents per pound, three times the duty on a pound of unwashed wool, first class, and 40 per cent ad valorem; valued at more than 30, and not more than 40 cents per pound, three and one-half times the duty on a pound of unwashed wool of class 1, and 40 per cent ad valorem; valued at above 40 cents per pound, four times the duty imposed on a pound of unwashed wool, class 1, and 50 per cent ad valorem (par. 390).

Valued at not more than 50 cents per pound, 40 per cent ad valorem; valued at more than 50 cents per pound, 50 per cent ad valorem.

Valued at not more than 40 cents per pound, duty three times that on a pound of unwashed wool of the first class; value above 40 cents per pound and not above 70 cents, four times the duty on one pound of unwashed wool of the first class, and in addition thereto upon all of the foregoing, 50 per cent ad valorem; if valued over 70 cents, four times the duty on a pound of unwashed wool of the first class, and 55 per cent ad valorem (par. 364).

Same as in 1897 (par. 376).

Free.

Supreme Court of the United States

No. 303, October Term, 1914.

CARLOS GSELL, PLAINTIFF IN ERROR,

vs.

THE INSULAR COLLECTOR OF CUSTOMS,

IN ERROR TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS

SUPPLEMENTAL BRIEF

For Plaintiff in Error on the Questions of Jurisdiction and Whether the Case Was Properly Invoked by Writ of Error Instead of Appeal. Submitted at the Request of the Court.

I

AS TO JURISDICTION

Through the courtesy of counsel on the other side, I have been given an opportunity to read his draft of the brief intended to be submitted in behalf of the Insular Collector of Customs of the Philippines in response to the request of this Honorable Court in this case respecting the questions above indicated. Since I concur with counsel as to certain of the views he has expressed, it would be mere repetition here to attempt any argument with reference to those points.

With reference to those points, I therefore, say simply that I am of opinion, as he is (unless I have mistaken the

purport of the draft referred to) that among the considerations on which the jurisdiction of this court depends are the ones (a) whether the judgment of the Supreme Court of the Philippines is a "final" one, (b) whether the act of Congress under which the case arose is "a statute of the United States" within the meaning of that term as used in that other act which confers jurisdiction on this court to review, &c., the final judgments and decrees of the Philippine Supreme Court, and (c) whether any other court than the courts below and this court has been given exclusive jurisdiction of appeals from the Philippines customs authorities.

I agree with counsel for the Insular Collector—and for the reasons he states—in thinking that the judgment of the Supreme Court below is "final" within the meaning of the word as used in the act conferring appellate jurisdiction on this court and that the act under which this case arose is "a statute of the United States" within the meaning of that expression as used in the jurisdictional statute above mentioned.

I also agree with counsel for the Insular Collector in the opinion that no other court than the Court of First Instance of Manila, the Supreme Court of the Philippines and this court has been given jurisdiction of appeals in cases coming up from the Philippines Insular Collector of Customs; that the United States Court of Customs Appeals has exclusive jurisdiction only to review the final decisions of the Boards of General Appraisers of the United States, and that, since there is no such board in the Philippines,* the provisions of law by virtue of which the Court of Customs Appeals has such exclusive jurisdiction elsewhere are not applicable in the case at bar.

---

*The Board of Protests and Appeals mentioned in the record does not decide appeals from the Collectors of the Ports, only investigates and makes recommendations. The decisions of such appeals are by the Insular Collector. See our principal brief, pp. 15-17.

In this connection, however, I think it should be added that, although Section 198 of the act does say (Judicial Code, 36, Stat., p. 1146) that,

> "If the importer," &c., "of any imported merchandise, or the collector or Secretary of the Treasury, shall be dissatisfied with the decision of the Board of General Appraisers as to the construction of the law and the facts respecting the classification of such merchandise and the rate of duty imposed thereon under such classification, or with any other appealable decision of said board, they, either of them, may within sixty days next after the entry of such decree or judgment, and not afterwards, apply to the Court of Customs Appeals for a review of the questions of law and fact involved in such decision: *Provided that in Alaska and in the insular and other outside possessions of the United States* ninety days shall be allowed for making such application to the Court of Customs Appeals."

And although this language read alone, would seem to indicate that Congress sought to include within the exclusive jurisdiction of that court applications for review of customs decisions from all territorial sources under the dominion of the United States, it would appear from other provisions and from the whole context of the statute that such was not the intention.

Sections 195 and 196 of the Judicial Code (id., p., 1145) not only expressly limit the appellate jurisdiction of the Court of Customs Appeals to decisions of the Boards of General Appraisers of the United States, but in the provision for cases pending at the time the act was to become effective *distinctly specifies the courts* which in this respect the Court of Customs Appeals was intended to supersede. The language is:

> "After the organization of said Court" (of Customs Appeals), "no appeals shall be taken or allowed from any Board of United States General Appraisers to any other court, and no appellate jurisdiction shall thereafter be exercised or allowed by any other court, in cases decided by said Board of United States General appraisers, but all appeals allowed by law from such Board of General Appraisers shall be subject to review only in the Court of Customs Appeals hereby established," etc.

Then follow the provisions for pending cases, which mention only the Circuit Court of Appeals, the Circuit and District Courts of the United States and the courts of the *territories*, not insular possessions, of the United States. In the repealing section, too, no mention is made of the provisions of the Philippine customs administrative act that empower the Court of First Instance of Manila to hear and decide appeals from the Insular Collector and the Supreme Court of the Islands to hear and decide appeals from the Court of First Instance in such cases.

Still another indication that it was not the intention that these Philippine customs cases should be included among those over which the Court of Customs Appeals was to have jurisdiction appears in the provision for such applications for review as might be made in behalf of the Government. The provision is (Judicial Code, Sec. 198, *supra*) that if the "*collector or Secretary of the Treasury* shall be dissatisfied with the decision of the Board of General Appraisers * * * they, of either of them, may * * * apply to the Court of Customs Appeals," &c.

By neither the United States customs administrative act nor the Philippines customs administrative act is the Secretary of the Treasury given authority to interfere in any way whatever with the taking of appeals in the Philippines and under the Philippines statute the collectors themselves have no such authority. All that the latter provides in this respect (see Acts of the Philippine Commission, No. 864) is that—

> "In case the decision of the Insular Collector, acting in his capacity as Collector of Customs for the Port of Manila or upon appeal to him from a collector of customs, shall be adverse to the Government on the matter at issue, and *the Secretary of Finance and Justice* shall certify in writing that in his opinion such decision ought to be revised by the Court of Customs Appeals (meaning the *Philippines* Court, which has, by virtue of another change in the law, been abolished and superseded by the Court of First Instance of Manila, Act No. 1405) "it shall be thereupon the duty of the Insular Collector to certify and transmit

his decision, together with the entry, invoices and exhibits and all other papers connected therewith, to the clerk of the court," &c.

Besides, it seems hardly conceivable that it could have been the intention of Congress to deprive either the Philippines customs authorities or Philippine importers of recourse to their local courts in the first instance and to put them to the inconvenience, expense and delay of coming half way around the world to obtain redress for mistakes made by local appraisers or collectors. If that must be held to have been the intention, however, it would follow that the defendant in error in this case has no standing in court, because no appeal was taken to the United States Court of Customs Appeals in behalf of the Government either by the Collector of the Port of Manila or by the Secretary of the Treasury, and, in the absence of such appeal within the time limited therefor, the decision of the Insular Collector in favor of the importer (the plaintiff in error in this court) would have to remain in effect.

I am of opinion also that a "title, right or privilege of the United States" is here involved, for it is a principle of law that "practical equality between alien and citizen has resulted from the entire freedom of intercourse that exists between civilized nations, so that it may be stated as a general rule, applicable to all such nations, that the elective franchise and the right to hold public office are almost the only advantages possessed by the citizen that are not enjoyed by the alien" (Webster, Citizenship, p. 49, cited in *Bisque* v. *United States*, 209 U. S. 91). See also "Our New Peoples; Citizens, Subjects, Nationals or Aliens" by Frederic R. Coudert.

"Indeed," said this court, in the *Pizarro, Prize* (2 Wheat 227), "in the languare of the law of nations, which is always to be consulted in the interpretation of treaties, a person domiciled in a country, and enjoying the protection of its sovereign, is deemed a subject of that country."

And it has occurred to me also that besides the ones mentioned in the brief of counsel for the Insular Collector (and stated above) there are certain other considerations that might

possibly be regarded by the court as among those on which its jurisdiction depends. These are—

(a) Whether the expression used in the provision conferring on this court jurisdiction to determine appeals from the court below—i. e., the provision that, "such final judgments or decrees" (of the Supreme Court of the Philippines) "may or can be reviewed," etc., "by said Supreme Court" (of the United States) "on appeal or writ of error by the party aggrieved," but only *"within the same time, in the same manner, under the same regulations and by the same procedure, as far as applicable, as the final judgments and decrees of the district courts of the United States,"*—is one which by analogy makes the Supreme Court of the Philippines the court of last resort for Philippine customs appeals and deprives this court of the jurisdiction it has in other cases arising in the Islands, and,

(b) Whether the provision of the Philippines customs administrative act (see our principal brief, p. 17) prescribing that "the decisions of the Court of First Instance for the City of Manila not carried to the Supreme Court upon bills of exception shall be final and binding, *as likewise shall be the decisions of the Supreme Court upon such appeals carried to it by virtue of the provisions of this act;*" and thus enacting that the Supreme Court of the Philippines shall be the court of last resort, can be construed to have that effect.

Referring first to the former of these questions, it would seem that it ought to be answered in the negative.

It is true that on the 1st of July, 1902, when the act was approved which provides for a temporary civil government in the Philippines, and which contains the original provision conferring on this court jurisdiction of appeals from and writs of error to the Supreme Court of the Islands, the Circuit Courts of the United States had to do with appeals from the Boards of General Appraisers; that there was an appeal from those courts to the Circuit Courts of Appeals, and that the latter were the courts of last resort. (See act of June 10, 1890, to simplfy the laws in relation to the collection of the revenue,

26 Stats., 131, as amended by the act of May 27, 1908, Sec. 15, 35 Stats., 404.)

It is true also that the provision of the section of the Philippines temporary civil government act that conferred on this court jurisdiction to review decisions of the Supreme Court of the Islands, was that the final judgments or decrees of the former might be reviewed, &c., "in the same manner, under the same regulaions and by the same procedure, as far as applicable, as the final judgments and decrees of the Circuit Courts of the United States; that afterwards (in 1911 when the judicial code was enacted) the Circuit Courts were abolished and their jurisdiction in large part conferred on the District Courts; that it was obviously for this reason that the substitution of the District for the Circuit Courts was made in the provision (in the Judicial Code) re-conferring the jurisdiction on this court in the matter of Philippine appeals and writs of error generally.

And I have no doubt that in making use of the expression "as far as applicable" Congress intended to imply that whenever practicable the procedure should *continue* to be substantially he same as that, first in the Circuit Courts, and, after their abolishment, in the District Courts of the United States—not merely that it should be as defined by the law as it existed in 1902 at the exact time of the conferring of jurisdiction in question on this court. But it should be considered that in the act of August 5, 1909, creating the Court of Customs Appeals (36 Stat., 106), the jurisdiction of the Circuit Courts in this particular class of cases was taken away, and that this legislation was confirmed as to the District Courts by the Judicial Code of March 3, 1911, (Id., 1087), after provision had been made for the abolishment of the Circuit Courts and the conferring of their general jurisdiction on the former—that all this was before the application for review of the decision of the Insular Collector in this case was filed in the Court of First Instance of Manila by the Secretary of Finance and Justice of the Philippines (July 18, 1911, R., p. 7), and long before the decision of that court and the appeal to the

Supreme Court below.

At that time there could not, therefore, in this case, have been anything analogous to the procedure in either the Circuit or District Courts of the United States. The Circuit Courts had been abolished; in all similar cases the District Courts had been relieved of their jurisdiction. Moreover, even if the provision in question could be construed to relate to the procedure as it existed at the time of its enactment in 1902, it will be seen that the statute conferring jurisdiction on the Circuit Courts in similar classes did provide for an appeal to this court (26 Stat., 131). The provision was:

> "The decision of said court" (the Circuit Court) "shall be final and the proper collector, or person acting as such, shall liquidate the entry accordingly, unless such court shall be of opinion that the question involved is of such importance as to require a review of such decision by the Supreme Court of the United States, in which case said Circuit Court, or the judge making the decree, may wihin thirty days thereafter allow an appeal to said Supreme Court, but an appeal shall be allowed on the part of the United States whenever the Attorney General shall apply for it within thirty days. * * * Said Supreme Court shall have jurisdiction and power to review such decision and shall give priority to such cases, and may affirm, modify or reverse such decision of such Circuit Court and remand the case with such orders as may seem proper in the premises."

This was not changed until the amendment of May 27, 1908 (35 Stats., 404, *supra*), when the Circuit Courts of Appeals were given jurisdiction of appeals from the Circuit Courts in this class of cases, and even then jurisdiction of the Supreme Court of the United States to review them was continued as to certain subjects and under certain conditions.

If, therefore, Congress had this in mind when it enacted that final judgments and decrees of the Supreme Court below might be reviewed by his court "in the same manner, under the same regulations and by the same procedure, as far as applicable, as the final judgments and decrees of the Circuit Courts of the United States," it would seem that it could not—at least then—have intended that either the Government

or importers in the Philippines should be excluded from a hearing and review by the highest court. It is true, as has been indicated, that there was an interim during which, in such cases and except in special instances, the Circuit Court of Appeals served as the court of last resort, but that interim began six years after this act of 1902 was passed and was brought to an end before the present application for review was filed by the Secretary of Finance and Justice of the Islands. It was ended by the abolishment of the Circuit Courts and the transfer of their jurisdiction in such cases to the Court of Customs Appeals of the United States.

The provision in effect at the time this action was begun in the Court of First Instance of Manila (Judicial Code, Sec. 248, Stats., 1158) was that "the Supreme Court of the United States shall have jurisdiction to review," &c., "the final judgments and decrees of the Supreme Court of the Philippine Islands *in all actions, cases, causes and proceedings now pending therein, or hereafter determined thereby,* in which the constitution or any statute, treaty, title, right or privilege of the United States is involved, or in causes in which the value in controversy exceeds $25,000, or in which the title or possession of real estate exceeding in value the sum of $25,000 * * * is involved, or brought in question," &c.

If, therefore, the courts below had jurisdiction, it would appear to follow that this court must have. The judgment below was a final one, a statute of the United States was involved (i. e., the act of Congress prescribing tariffs for the Philippines, 36 Stats., 153), and there is nothing in the procedure formerly in effect in the Circuit Courts or now in effect in the District Courts that is in conflict with the procedure that was resorted to in this case, since the District Courts have no jurisdiction in cases of this character, and, as a consequence, no procedure relating to them. That the courts below had jurisdiction sufficiently appears, as it seems to me, from what has already been said.

The second of the questions I have suggested in this brief, i. e., whether the Philippine customs administrative act operates,

in accordance with its purport, to constitute the Supreme Court of the Islands the court of last resort in such cases as that at bar can, I think, be as easily answered. Though enacted by authority of Congress, that statute was not enacted by Congress itself but by its deputy and subordinate, the Philippine Commission.

Even if it could be held that this Commission, acting within the scope of its authority, could repeal in part the act of the superior legislative body that conferred jurisdiction on this court to review the final judgments and decrees of the Supreme Court of the Islands "in all actions, cases, causes and proceedings now pending therein or hereinafter determined thereby in which the Constitution or any statute, treaty, title, right or privilege of the United States is involved," &c., such a construction would not be material here because since the Philippine statute was enacted, Congress, in the Judicial Code, has re-conferred such jurisdicion on this court.

II

AS TO WHETHER THE JURISDICTION OF THIS COURT WAS PROPERLY INVOKED BY WRIT OF ERROR INSTEAD OF APPEAL

Sections 287 and 288 of the Philippine customs administrative act, as amended by act No. 1405 of the Philippine Commission, after providing that on the taking of an appeal the Insular Collector "shall forthwith certify and transmit to the Clerk of the Court of First Instance for the City of Manila such notice of appeal, together with the entry, invoices and exhibits and all other papers connected therewith, and his decision," are in part:

> "The Court of First Instance for the City of Manila shall proceed, upon notice to the appealing party and to the Attorney General" (of the Philippines) "to examine the case submitted. Either party shall have *the same right of exception* to any ruling of the Court of First Instance for the City of Manila, and of rehearing by the

Supreme Court on any such appeal, *in the same manner as pertains to parties to all other civil actions pending in the Courts of First Instance.* * * * In case any appeal is carried to the Supreme Court of the Islands, on exceptions, that court shall thereupon proceed to examine the case *and render such judgment or issue such orders as it renders and issues in other cases pending in the Courts of First Instance.* The decision o fthe Court of First Instance for the City of Manila not carried to the Supreme Court upon bills of exception shall be final and binding."

This statute, it is true, makes use of the expression "appeal" instead of "writ of error." The word does not appear to me, however, to have been employed in its technical sense. As stated in the Cyclopaedia of Law and Procedure (Vol. 2, pp. 516, 517), "owing to the diversity of statutory provisions regulating appellate procedure, the word 'appeal' is used in many different senses. The term is sometimes used to denote the nature of the appellate jurisdiction without regard to the particular mode by which the case is transmitted by one tribunal to another. Constitutional and satutory provisions sometimes make use of the term in a broad and comprehensive sense to signfy the removai of a case from an inferior to a superior court, and, when so used, it designates all kinds of proceedings to obtain a review by an appellate court, whether by the technical appeal, by writ of error, by certiorari, or otherwise."

The present, as it seems to me, is a case in point. The purpose in employing the expression "appeal" was obviously to provide for a review of the decisions of the Insular Collector of the same sort that is had in all other cases first by the Court of First Instance of Manila and afterwards by the Philippine Supreme Court. By Section 288 of the act, "the evidence taken before either the Collector of Customs or the Collector of Customs for the Philippine Islands may, if competent, be used before said Court of First Instance for the City of Manila and said court may receive further evidence pertinent to the issue," &c. The parties are given "the same right of exception to the rulings of that court" as the parties "to *all* other civil actions pending in the

Courts of First Instance," and, on appeal, the Supreme Court is authorized to "proceed to examine the cases and render such *judgments* and issue such orders as it renders and issues in other Courts of First Instance." The decisions of the Court of First Instance, not carried to the Supreme Court upon *bills of exception*" are to be final and binding.

The legislators, therefore, have not provided that the procedure in such cases must be in accordance with the usual practice in equity and admiralty. On the contrary, by employing legal terms, they have indicated rather that it should be in accordance with that in cases at law; and, so far as the mode of appeal and the latitude permitted the Supreme Court of the Islands are concerned, the Code of Civil Procedure in effect in the Philippines makes no distinction between appeals (considered technically) and writs of error. The appellate court may not examine the facts in either case except for a certain purpose (i. e., to determine whether the decision below is manifestly against the weight of the evidence, &c.,) and under certain conditions.

Then, too, it has been held in many courts (*id.*,) that a statute that does not specifically make the appeal in its technical sense the sole remedy, does not do away with the remedy by writ of error. As a matter of fact, because of the confusion caused by the failure of the legislature and courts to indicate the distinction between the classes of cases to which these remedies are applicable, in view of th peculiar practice in the Philippines, it has been more or less the practice to go up from the Courts of First Instance by both writ of error and appeal. Doubtless this court has noticed this in the records that have come before it.

Nevertheless, it has been held by this court that, in the absence of any statutory provision to the contrary, the only proper mode of bringing a case at law here from a federal court for review is by writ of error; that an appeal (in the technical sense) is applicable only in cases in equity and admiralty (see citations in 1 Ency. of U. S. Sup. Ct. Dec., 376, 391). In the case of *Behn, Meyer* & *Co.*, v. *Campbell* (205 U. S., 403),

this principle was applied to an action brought in the Philippines and prosecuted under the same provisions of the Code of Civil Procedure that are made applicable to such cases as the one at bar by the statute last above referred to. In this connection the court said:

> "The defendant first appealed from the judgment of the Supreme Court of the Philippine Islands which had been rendered against it, and the appeal was dismissed, 200 U. S., 611. The reason *so plain that it seemed not to require statement*, was that errors alleged to have been committed in an action at law can be reviewed here only by writ of error. This, in the absence of modification by statute, is a rule in respect to all courts whose records are brought here for reivew."

And there would seem to be no doubt that before it was made a statutory proceeding, an action of this sort was one cognizable by the federal courts under the provisions of the common law (*Elliott* v. *Swartwout*, 10 Pet. 137, 156).

Therefore, it must be still an action of that character, for its essential character, I imagine, could not be changed by statute if no equitable elements were added. But whether it could or not, in *De La Rama* v. *De La Rama* (210 U. S. 303) it was unequivocally held that *all* cases coming here from the Philippines—so far as the procedure in bringing them to this court is concerned—must be brought here in accordance with the practice in the Circuit (now District) Courts of the United States, and it is settled that that, in a case at law, is by writ of error.

In the draft of brief above referred to, counsel for the Insular Collector cites authorities going to show that in the United States proper "the procedure for the review of the findings of the Boards of General Appraisers in the matter of the assessment of duties has been by way of appeal and not by writ of error," and he says that "in fact procedure by way of appeal is provided for by Section 15 of the Customs Act of June 10, 1890, as amended May 27, 1908 (35 Stats., 403), which expressly provided for certifying the record and the evi-

dence taken before the General Apraisers and their decision thereon, which becomes the record on which the Circuit Court is to hear and determine the questions of law and fact involved in the decision of the Board of General Appraisers," citing *Passavant* v. *United States,* 148 U. S. 214, 219; *United States* v. *Klingenberg,* 153 U. S. 93, 101.

And he adds that "it is clear from these authorities that the proper procedure to review the decisions of administrative officials regarding the assessment of revenue is by way of appeal when the court reviews both the conclusions of law and fact;" that "the jurisdiction formerly exercised by the Circuit or District Courts * * * is now vested in the Court of Customs Appeals, created by the act of August 5, 1909, and this jurisdiction is by way of appeal." It appears that this is the whole substance of the argument he is to submit on this point in response to the request of the court.

It would seem that he has lost sight, however, of the fact that the statute on which he relies is not the act that fixes the tariffs for the Philippines, and which is the one in question; that the provisions he refers to as establishing the procedure are those which establish the procedure in this country and not in the Philippines, and that the ones quoted above in this brief from the customs administrative act of the Philippines differ very widely in many respects from the administrative act made applicable to the United States. The cases he cites are not therefore, as it seems to me, at all in point.

For these and other reasons it is believed by the undersigned, and confidently urged, that this court has jurisdiction and that that jursdiction has been properly invoked.

Respectfully submitted,

HARRY W. VAN DYKE,
FOR PLAINTIFF IN ERROR,

WASHINGTON, D. C., October 9, 1915.

Supreme Court, U. S.
FILED
OCT 9 1915
JAMES D. MAHER
CLERK

No. 81.

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

CARLOS GRELL, PLAINTIFF IN ERROR,

v.

THE INSULAR COLLECTOR OF CUSTOMS.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

BYRON S. ADAMS, WASHINGTON, D. C.

In the Supreme Court of the United States.

OCTOBER TERM, 1915.

CARLOS GSELL, PLAINTIFF IN ERROR,
v.
THE INSULAR COLLECTOR OF CUSTOMS. } No. 31.

SUPPLEMENTAL BRIEF FOR DEFENDANT IN ERROR.

In compliance with the request of this Court, made June 21 last, this brief is submitted upon the following questions:

FIRST

Whether this Court has jurisdiction to review the order of the Supreme Court of the Philippine Islands in this case.

In the first place must be a confession of embarrassment due not so much to my failure to apprehend and raise the jurisdictional questions which the Court itself has now raised, as to an apprehension of failure even now to perceive those considerations which, in the mind of the Court, gave rise to the doubt. I proceed, however, to discuss those considerations which occur to me.

1. Is the Philippine Tariff Act, at the base of this case, a statute of the United States within the meaning of Section 248 of the Judicial Code?

Of course, the Philippine Tariff Act is a statute of the United States in the sense that it was enacted by Congress (36 Stat. 130), under its plenary power to legislate for territory belonging to the United States (Constitution, Art. IV, Sec. 3). And there is no reason to doubt that it is a statute of the United States in the sense now questioned, unless it can be found in the fact that the act is applicable only to the Philippines. Upon proper principles of construction it is difficult to see how this act of Congress can be held to be not a statute of the United States in the appealable sense because of such local character. True, in what might appear to be an analogous case, this Court has held that the words "any law of the United States," found in Section 250 of the Judicial Code, regulating appeals from and writs of error to the Court of Appeals of the District of Columbia, embrace only laws of the United States not local in their application to the District. *American Security and Trust Company* v. *District of Columbia*, 224 U. S. 491 (followed and applied in *Washington Home* v. *American Security Company*, 224 U. S. 486; *McGowan* v. *Parish*, 228 U. S. 312; *Washington & Mt. Vernon Railway Company* v. *Downey*, 236 U. S. 190, 193; *District of Columbia* v. *P. B. & W. Railway Company*,

232 U. S. 716, and *Newman* v. *Frizzell*, decided at the last term.)

But that case is clearly distinguishable from this, since one set of considerations controlled the decision there, and a totally different but no less cogent set must control the decision here. The term "any law of the United States," as it was before the court there, and the same term, substantially, as it comes to the Court now, for construction, have entirely different connections, which may lead to entirely different conclusions; and that this might well be so, the Court expressly recognized in its decision just cited, by saying, "It needs no authority to show that the same phrase may have different meanings when used in different connections."

In the principal case, *supra*, this Court, as did the court below (38 App., D. C., 32), found ample reason to look to the spirit rather than to the mere letter of the statute. Indeed, the Court hardly could have done otherwise. The unmistakable purpose of the statute required the application of a rule of strict construction. The object of the act there construed was to lighten the burden of this court, limit the number of cases coming to it, confine it to what properly belonged to it. A literal construction would have thwarted the whole purpose of the statute and largely and irrationally increased the appellate jurisdiction of this court. Not only this, but associated phrases also convincingly suggested the construction

adopted. In a word, any other construction would have shocked the whole sense of the legislation. It was a case where a meaning clearly within the letter was as clearly without the aim of the statute.

The statute involved here is affected by no considerations that urge a qualification of its letter; on the contrary, considerations, pertinent and potent—if such be required for the purpose—compel adherence to the words of the statute in their simplest, unqualified sense. Here the spirit and simple sense of the statute concur. Section 248 of the Judicial Code, as a substantially literal reenactment of section 10 of the Organic Act, made no changes of substance; its language therefore continues the meaning of the same language in section 10. Establishing a new government which was to be under the control and subject to the legislation of Congress, and providing it with a body having the power of local legislation, the Act has in view legislation by Congress and legislation by the Commission—Statutes of the United States and Acts of the Philippine Commission. It ought to follow that if the words "statute of the United States" have a distinctive meaning, then as a matter of construction and as a matter of practice, they mean an act of Congress as opposed to an act of the Philippine Legislature. That meaning should persist in the Judicial Code. Such a meaning the similar words construed in *American Security & Trust Company* v. *District of Columbia, supra,* could not have had, the

District of Columbia having no local legislative power. "Used in widely different connections, the same phrase may have widely different meanings."

Again, the purpose here and the purpose there were equally divergent. Here it was not the purpose to relieve the Court of its burden, for of necessity the new task of governing the Philippine Islands involved new labors in every department of government; the purpose was not to limit the jurisdiction of this court, but to confer more of it.

Neither are there any associated phrases here to point to a different meaning.

A further suggestion for rejecting the view that "statute of the United States" means those of general application only, is found in the fact that the Organic Act (Section 1) prescribes, in effect, that laws of Congress of general application shall not apply to the Philippine Islands except when Congress specifically so provides. It is worthy of remark, at least, that Congress should so carefully prohibit the application of its general laws to the Philippines, but at the same time with equal care provide for review by this court of judgments involving laws of general application and no others.

If there be room for construction at all, I see reasons here for a liberal, rather than a strict, construction. Section 248, Judicial Code, must be construed as its prototype, Section 10 of the Organic Act, was intended to be understood when it was

passed on the day of creation of the Philippine Government—July 1, 1902. And even if it has been shown by the experience of the subsequent years—as I think it has not been shown—that Congress with greater wisdom could have conferred upon this court less appellate jurisdiction over cases coming up from the Philippines, that consideration can not properly enter into a present determination of what Congress in its wisdom at the time actually did do (98 U. S. 172; 99 U. S. 64; 101 U. S. 119). Without argument it can indisputably be said that there is nothing in the language of this section, nor in the history of its enactment (sparse as I find the legislative reports and debates upon it to be), nor in the history of our establishment of civil government in the Philippines and defining the relation thereof to the Federal Government, nor in any other circumstance, to indicate that Congress intended to commit to the courts of the Philippine Islands the final construction of any act which it in its wisdom had seen fit to pass.

Congress has legislated directly for the Philippines in but few matters, such as Tariff, Immigration, and Coinage, and has extended but little general legislation to these Islands. Cases coming up from the Philippines can never be numerous. While those involving matters of customs may be, as this one is, of but little importance, the correct view must be, I think, that under existing law cases arising in that field which Congress itself chooses directly to regulate may come to this court for a final determination.

2. That the United States Tariff Laws are administered differently here furnishes no suggestion against the jurisdiction of this Court.

The Philippine Islands are expressly excluded from the operation of the United States Tariff Acts (Act of 1909, 36 Stat. 11; Act of 1913, 38 Stat. 114). The administrative and judicial machinery provided by these Acts for the collection of customs here has no application over there. The Board of General Appraisers and the Court of Customs Appeals with final jurisdiction over appeals from the decision of said Board, are creatures and functions only of the Tariff Laws of the United States. The Philippine Islands being thus excepted, Congress enacted for them a separate Tariff Law (36 Stat. 130). That Act provides for no administrative machinery other than prescribing in Section 25 thereof—

> That the Insular Collector of Customs shall, subject to the approval of the secretary of the department having jurisdiction over the customs service, make all rules and regulations necessary to enforce the provisions of this Act.

The Government of the Philippines already had a system of customs administration (Sections 1662–1664, Compilation of the Acts of the Philippine Commission, 1908), which was not affected by the above Tariff Act and under which either the importer or the Government may appeal from the decision of the Insular Collector of Customs to the Court of First Instance of the City of Manila and from the

decision of said court to the Supreme Court of the Philippine Islands; and wherein it is also provided—

> That said court of first instance and the Supreme Court of the Philippine Islands shall have and exercise in the customs appeal cases, all the powers which those courts have and exercise in other civil actions pending therein.

The decision, therefore, in this case was an exercise of judicial power.

3. No other consideration is perceived which suggests a negative response to this question, unless a lack of finality is to be found in the form of the judgment entered.

This case seems to be one the correct decision of which involves the construction of a statute of the United States. The contest is not about facts only, but gives rise to the substantial question, under what section of the Tariff Act, properly construed, should the commodity be classified—a question of law.

It may be that the judgment entered lacks finality when tested by the strict rules of appellate procedure. The whole case seems to have been taken to the Supreme Court of the Philippines by bill of exceptions in accordance with local practice, and the errors which the Supreme Court discusses in its opinion and recites therein as having been assigned (R. 38), reached the judgment upon the merits by the court of first instance (R. 3), and the opinion of the court disposes of those questions and in terms affirms the

judgment of the court of first instance. The opinion, however, concludes with an order for the entry of judgment at a subsequent date specified, directing that thereafter the record be remanded for execution. The judgment actually entered, however (R. 44), is one which, in terms, affirms not the judgment of the court of first instance upon the merits, dated December 13, 1911 (R. 3), but the "judgment of the court of first instance of Manila, dated the 11th day of March, 1912, and from which the above appeal was taken" (R. 5). Now, the "judgment," thus referred to is, in fact, an opinion by the court of first instance expressing the grounds for overruling a motion for a new trial and *an order overruling the motion.* Therefore, in form at least, the judgment of the Supreme Court of the Philippines is an order affirming an order denying a motion for a new trial, and not final in the appealable sense. *Baupre* v. *Noyes*, 138 U. S. 397, 402; *Houston* v. *Moore*, 3 Wheat. 433; *Holmgren* v. *United States*, 217 U. S. 509, 521; *City of Manning* v. *German Insurance Company*, 107 F. R. 52, 54.

A judgment does not become final for the purposes of an appeal until it is actually entered. *Silsby* v. *Foote*, 20 How. 290; *Greene* v. *Van Buskerk*, 3 Wall. 448; *Wheeler* v. *Harris*, 13 Wall. 51. The judgment, as it appears in its final form, must be regarded as the final intention of the court. *Harvey* v. *Waite*, 10 Ore. 121; *Tuttle* v. *Claflin*, 66 F. R. 8; *Wheeler* v. *Harris*, 13 Wall. 51. If the judgment is not what it

ought to have been it should be corrected below, not here. *Spies* v. *Illinois*, 123 U. S. 131. A judgment actually entered cannot be aided by presumption. *Watts* v. *Waddle*, 6 Peters 389. Nor in this case ought it to get support from the opinion.

SECOND.

If this court has such jurisdiction, whether the same must be invoked by appeal and not by writ of error.

Plaintiff in error has mistaken his remedy. He should be here by appeal. Section 248 of the Judicial Code provides that final judgments and decrees of the Supreme Court of the Philippine Islands may be reviewed *in the same manner, under the same regulations, and by the same procedure,* as far as practicable, as the final judgments and decrees of the district courts of the United States. The purpose was to cause the procedure in cases coming up from the Philippine Islands to conform to the procedure established among the Federal courts here in similar cases. Whether review should be sought by appeal or writ of error, depends upon whether the prescribed procedure for the review of a final judgment or decree of the district court of the United States, in such a case, is by way of appeal or writ of error. *De la Rama* v. *De la Rama*, 201 U. S. 309; *Fisher* v. *Baker*, 203 U. S. 174, 182; *Behn* v. *Campbell*, 205 U. S. 403. The procedure to review findings of the Board of General Appraisers has always been by way of appeal and not by writ of error. *United States* v. *Klingenberg*, 153

U. S. 93, 103, citing *in re Fassett*, 142 U. S. 478, 487, and *Passavant* v. *United States*, 148 U. S. 214. Procedure by way of appeal is provided for by Section 15 of the Customs Administrative Act of June 10, 1890, as amended May 27, 1908 (35 Stat. 403), which expressly provided for certifying the record and the *evidence taken before the General Appraisers* and their decision thereon, which became the record on which the circuit court was to hear and determine the questions *of law and fact* involved in the decision of the Board of General Appraisers. *Passavant* v. *United States*, 148 U. S. 214, 219; *United States* v. *Klingenberg*, 153 U. S. 93, 101. Upon the authorities and the requirement of the statute, it is clear that the proper procedure to review the decision of administrative officials regarding the assessment of revenue, was by way of appeal where the court reviews both the conclusions *of law and fact*, except as to question with respect to which the statute makes the findings of fact by the administrative official conclusive. In fact, the circuit court decided the appeal on the record made by the Board of General Appraisers, inasmuch as it was provided that "all competent evidence taken by and before said Board of General Appraisers shall be evidence before said circuit court." Section 15, Act of June 10, 1890, as amended May 27, 1908 (35 Stat. 403). After appellate jurisdiction was conferred on the circuit court of appeals by Section 6 of the Act of March 3, 1891 (26 Stat.

286), in revenue cases, an ordinary appeal from the final judgment of the circuit or district court in such cases lay to the court of appeals and not to the Supreme Court, the scope of review by the Supreme Court being limited to the question of jurisdiction of the court below. *Passavant* v. *United States*, 148 U. S. 214, citing *Hubbard* v. *Soby*, 146 U. S. 56. The jurisdiction formerly exercised by the usual Federal courts to review the decision of the Board of General Appraisers is now vested in the Court of Customs Appeals, created by the Act of August 5, 1909; and this jurisdiction is by way of appeal. Section 195, Judicial Code (36 Stat. 1145).

It thus appears that at all times, when the district and circuit courts had jurisdiction to review customs decisions as well as after that jurisdiction became vested in the newly created Court of Customs Appeals, the procedure to obtain such review has been by way of appeal. Indeed, the inherent character of customs contests is such as to suggest, if not require, on general principle, a review by way of appeal.

CONCLUSION.

It is submitted that the proper procedure to review the decision of the Supreme Court of the Philippine Islands in this case was by appeal and not by writ of error, and that, therefore, the writ should be dismissed.

S. T. ANSELL,
Attorney for Defendant in Error.

L. W. CALL.